

**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 APARTMENTS, L.L.C.

Respondent

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Docket No. TSCA-07-2007-0035

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Lorraine Apartments, L.L.C. (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 Apartments, L.L.C., a Missouri Corporation.

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.

Violations

General Allegations

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

7. Respondent is, and at all times referred to herein was, 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 a multi-unit apartment building located at 527 East Walnut Street, Springfield, Missouri 65806 (the "Property").

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

10. Information collected during an EPA inspection performed at the Property on August 31, 2006 shows that Respondent entered into contracts to lease the following target housing units in the Property between 2004 and 2006: 527 East Walnut Street #103, Springfield, 65806, 527 East Walnut Street #105, Springfield, 65806, 527 East Walnut Street #204, Springfield, 65806, 527 East Walnut Street #303, Springfield, 65806, 527 East Walnut Street #306, Springfield, 65806, 527 East Walnut Street #310, Springfield, 65806.

Count 1

11. Complainant hereby incorporates the allegations contained in Paragraphs 6 through 10 above, as if fully set forth herein.

12. Information collected shows that from 2004 to 2006, Respondent failed to provide the lessees of the target housing units listed in Paragraph 10 with an EPA-approved lead hazard information pamphlet before the lessees were obligated under a contract to lease target housing.

13. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to lessees of target housing units listed in Paragraph 10, from 2004 to 2006, prior to each lessee's obligation under contract, constitute violations of 40 C.F.R. § 745.107(a)(1) 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 2

14. Complainant hereby incorporates the allegations contained in Paragraphs 6 through 10 above, as if fully set forth herein.

15. Information collected shows that for the properties listed in Paragraph 10, Respondent failed to include as part of the contract to lease target housing (as an attachment or within the contract), the Lead Warning Statement language provided in 40 C.F.R. 745.113(b)(1), a disclosure of known lead-based paint or an indication of no knowledge thereof required by 40 C.F.R. § 745.113(b)(2), and a list of lead-based paint related records or reports or an indication that no such records are available as required by 40 C.F.R. § 745.113(b)(3). Respondent also failed to obtain from the lessees, a statement affirming receipt of the aforementioned information

as required by 40 C.F.R. § 745.113(b)(4) and a dated signature of the lessee, certifying the accuracy of their statements required by 40 C.F.R. § 745.113(b)(6)

16. Respondent's failure to provide the information detailed in Paragraph 15 for leases of target housing units listed in Paragraph 10 between 2004 and 2006 are violations of 40 C.F.R. § 745.113(b) 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

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

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

19. 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.

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 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.

22. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$4,062 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, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this document.

23. The effect of settlement described in Paragraph 22 above is conditioned upon the accuracy of the Respondent's representations to EPA as memorialized in Paragraph 21 of this Consent Agreement and Final Order.

24. By his or her signature below, each signatory of this Consent Agreement and Final Order certifies that he or she is fully authorized by the parties to execute this Consent Agreement and to legally bind the parties represented to the terms and conditions of the Consent Agreement and accompanying Final Order.

25. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 23 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, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount of \$4,062, on or before thirty (30) days of the effective date this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

EPA - Region 7,
c/o Mellon Bank
P.O. Box 371099M,
Pittsburgh, Pennsylvania 15251.

3. The payment shall reference Docket Number, TSCA 07-2007-0035 and In the Matter of Lorraine Apartments L.L.C. Copies of the check shall be forwarded to:

Demetra O. Salisbury
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 7,
901 North 5th Street
Kansas City, Kansas 66101; and

Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 7,
901 North 5th Street
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid 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.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas, 66101.

RESPONDENT
LORRAINE APARTMENTS, L.L.C.

Date: 9/5/07

By: 

Jeff Lovas Manager/Member
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/10/07

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

Date: Sept. 10, 2007

By: Demetra O. Salisbury
Demetra O. Salisbury, Attorney
Office of Regional Counsel

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

Date: September 11, 2007 Robert Patrick
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Lorraine Apartments, LLC., Respondent
Docket No. TSCA-07-2007-0035

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:

Demetra O. Salisbury
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:

Jeffery J. Love
Millington, Glass & Love
1736 E. Sunshine, Ste. 405
Springfield, Missouri 65804

Dated: 9/14/07


Kathy Robinson
Hearing Clerk, Region 7