

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2009 JUN 10 PM 4: 30
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF: § Docket No. TSCA-06-2008-6094
 §
GILLESPIE REALTY, § **CONSENT AGREEMENT**
 § **AND FINAL ORDER**
RESPONDENT. §

I. PRELIMINARY STATEMENT

1. The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Gillespie Realty (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

2. Complainant initiated this proceeding for the assessment of civil penalties pursuant to Section 16 of the Toxic Substances Control Act, as amended (TSCA), 15 U.S.C. § 2615, and 40 C.F.R. § 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, by filing an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) on September 30, 2008, against Respondent for violations of TSCA and the regulations promulgated pursuant to TSCA.

3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or in this CAFO.

4. Complainant and Respondent have agreed that settlement of this matter is in the public's best interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

5. As part of this settlement, Respondent explicitly waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint and waives all defenses which have been raised or could have been raised to the claims set forth in the Complaint.

6. As part of this settlement, Respondent waives any right to contest the allegations in the Complaint and its right to appeal the Final Order set forth herein.

7. Respondent consents to the issuance of the CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

8. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint.

9. Each party to this action shall bear its own costs and attorney fees.

10. Nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

11. Respondent hereby certifies to the best of its knowledge that, as of the date of execution of this CAFO, Respondent has corrected the violations alleged in the Complaint and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 409 of TSCA, 15 U.S.C. § 2689, and the Real Estate Notification and Disclosure Rule (Disclosure Rule)

requirements of 40 C.F.R. Part 745, Subpart F, a rule promulgated under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 et seq.

12. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. Respondent is Gillespie Realty, 502 East Main Street, Fredericksburg, Texas 78624-4616.

14. On or about August 22, 2007, EPA conducted an inspection of Respondent to determine compliance with the Disclosure Rule.

15. On or about August 22, 2007, EPA Inspector Joe Steadham presented his EPA Inspector credentials to Greg Oehler, representative of Respondent.

16. On or about August 22, 2007, Mr. Oehler signed EPA Form 7740-3 for 1018, Notice of Inspection, thereby certifying voluntary consent for EPA to review and make copies of real estate notification and disclosure forms and any other documents relating to EPA's ability to determine compliance with the Disclosure Rule.

17. Pursuant to 40 C.F.R. § 745.103, housing constructed prior to 1978 is defined as target housing.

18. Respondent is in the business of selling target housing.

19. Respondent is a party who enters into a contract with a seller or lessor, for the purpose of selling or leasing target housing and is therefore an "agent" as defined in 40 C.F.R. § 745.103.

20. On or about December 5, 2005, Respondent was an agent for the sale of target housing at 408 East Schubert Street, Fredericksburg, Texas 78624-4340.

21. On or about August 3, 2007, Respondent was an agent for the sale of target housing at 206 South Lincoln Street, Fredericksburg, Texas 78624-4132.

22. Pursuant to 40 C.F.R. § 745.113(a)(4), an agent is required to include, in the contract to sell target housing, an attachment containing a statement by the purchaser affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2696. Respondent failed to attach such a statement in the contracts for the target housing listed in Paragraphs 20 and 21. Therefore, Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.113(a)(4).

23. Pursuant to 40 C.F.R. § 745.110(a), an agent for the sale of target housing must provide the purchaser with an opportunity to take up to ten (10) days to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint before the purchaser is obligated under a contract to purchase target housing. Respondent did not allow the purchaser the opportunity to conduct a risk assessment or inspection of the target housing within a ten-day period to determine the presence of lead-based paint before the purchaser became obligated under a contract to purchase the target housing listed in Paragraph 20. Therefore, Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.110(a).

24. Pursuant to 40 C.F.R. § 745.113(a)(5), an agent is required to include as an attachment to the contract to sell target housing, a statement by the purchaser, indicating that the purchaser has either received the opportunity to conduct a risk assessment or inspection, or waived such an opportunity. Respondent failed to attach to the contract to sell target housing such a statement from the purchaser for the target housing listed in Paragraph 20. Therefore, Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.113(a)(5).

III. TERMS OF SETTLEMENT

25. For the reasons set forth above, Respondent has agreed to pay a civil penalty in the amount of \$1,092.00.

26. Payment shall be made by one of the following methods within thirty (30) days after the effective date of this CAFO:

a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

b. By wire transfers to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-4087

d. By credit card payments to: <https://www.pay.gov>

Enter sfo 1.1 in the search public forms field

The case name and docket number (*In the Matter of Gillespie Realty*, Docket No.

TSCA-06-2008-6094) shall be clearly marked on the check or other method of payment to ensure credit for payment.

27. Respondent shall send simultaneous notices of payments, including copies of the check or other proofs of payment, to each of the following:

- a. Ms. Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

- b. Ms. Pat Weatherly (6EN-HM)
TSCA Enforcement Officer
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

- c. Ms. Rebekah Reynolds (6RC-ER)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Adherence to this request will ensure proper credit is given when payments are received.

28. Respondent agrees not to claim nor attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue.

See 40 C.F.R. § 13.11(b).

30. If EPA does not receive payment within thirty (30) days of the due date, EPA will also impose a late payment handling charge of \$15.00 for each subsequent thirty (30) day period. Finally, EPA will apply a six percent per annum penalty on any principal amount not paid within 90 days of the due date. Other penalties for failure to make a payment may also apply.

IV. PARTIES BOUND

31. The provisions of this CAFO shall apply to and be binding upon the Parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

V. MODIFICATIONS

32. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of EPA and Respondent, and such modification or amendment being filed with the Regional Hearing Clerk.

VI. RETENTION OF ENFORCEMENT RIGHTS

33. EPA does not waive any rights or remedies available to EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions unrelated to matters addressed in this CAFO.

VII. RECORD PRESERVATION

34. Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary.

VIII. COSTS

35. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 601 *et seq.*, and any regulations promulgated pursuant to those Acts.

IX. TERMINATION

36. Upon payment of the civil penalty specified herein in accordance with the provisions set forth in this CAFO, this CAFO shall be thereby satisfied and terminated without further proceedings.

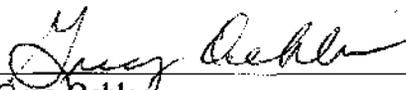
X. EFFECTIVE DATE

37. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

Consent Agreement and Final Order
In the Matter of Gillespie Realty
Docket No. TSCA-06-2008-6094

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER

FOR RESPONDENT:



Greg Oehler
Gillespie Realty

5/25/2009

Date

FOR COMPLAINANT:



John Blevins
Director
Compliance Assurance and
Enforcement Division

6-9-09

Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This Final Order shall become effective upon filing with the Regional Hearing Clerk as stated in 40 C.F.R. § 22.31(b).

Issuance Date: June 10, 2009



Michael C. Barra
Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2009, the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) concerning Gillespie Realty, Docket No. TSCA-06-2008-6094, were hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the methods indicated:

UNITED STATES POSTAL SERVICE CERTIFIED RETURN RECEIPT REQUESTED:

Mr. Greg Oehler
Gillespie Realty
502 East Main Street
Fredericksburg, TX 78624-4616

HAND-DELIVERED:

Ms. Rebekah Reynolds (6RC-ER)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Ms. Pat Weatherly (6EN-HM)
TSCA Enforcement Officer
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
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Lori Jackson
Paralegal