

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2012 SEP 14 AM 8:10

BEFORE THE ADMINISTRATOR

| | | |
|--------------------------------|---|-------------------------------------|
| In the Matter of |) | |
| |) | Docket No. TSCA-07-2012-0014 |
| |) | |
| Bonita M. Bagnall |) | |
| 7 North 6 th Street |) | |
| Marshalltown, Iowa 50158 |) | |
| |) | |
| Respondent |) | |

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Bonita M. Bagnall (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).

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 (the Act), 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 Bonita M. Bagnall (Bagnall).

Section III

Statutory and Regulatory Background

5. Congress passed 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, and at all times referred to herein was a "person" within the meaning of TSCA.

7. Respondent is the lessor as defined by 40 C.F.R. § 745.103, for the properties located at 510 East Church Street #1 in Marshalltown, Iowa; 510 East Church Street #2 in Marshalltown, Iowa; and 118 North Center Street #3 in Marshalltown, Iowa (the Properties).

8. The Properties were constructed before 1978.

9. The Properties are "target housing" as defined by 40 C.F.R. § 745.103.

Violations

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

Count 1

11. The facts stated in Paragraphs 6 through 9 above are herein incorporated.

12. Respondent entered into contracts to lease the following target housing units: unit 510 East Church Street #1 in Marshalltown, Iowa, on or about December 2010; unit 510 East Church Street #2 in Marshalltown, Iowa, on or about January 1, 2011; and unit 118 North Center Street #3 in Marshalltown, Iowa, on or about February 2011.

13. Respondent failed to provide the lessees of 510 East Church Street #1 with an EPA-approved lead hazard information pamphlet before lessees were obligated under contract to lease the target housing unit as required by 40 C.F.R. § 745.107(a)(1).

14. Respondent failed to provide the lessees of 510 East Church Street #1, 510 East Church Street #2, and 118 North Center Street #3 with notice of the existence of lead-based paint or lead-based paint hazards and failed to provide copies of available records or reports of lead-based paint or lead-based paint hazards before lessees were obligated under contract to lease the target housing unit as required by 40 C.F.R. § 745.107(a)(4).

15. Respondent's failure to perform the acts indicated in Paragraphs 13 and 14 above are violations of 40 C.F.R. §§ 745.107 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.

Section V

Consent Agreement

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

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

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

19. 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.

20. Respondent certifies by the signing of this CAFO that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

21. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty based on the Ability to Pay (ATP) determination. The ATP determination was based on the Respondent's Ability to Pay claim and financial information submitted to EPA. This financial information was reviewed, and it was determined that a mitigated civil penalty of five-hundred (\$500.00) dollars was appropriate. The Respondent agrees that the mitigated civil penalty of five-hundred dollars will be paid within thirty (30) days of the effective date of the Final Order.

22. 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.

23. Respondent understands that its 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 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.

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 five-hundred (\$500.00) dollars within thirty (30) days of the effective date of this Final Order. Such 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, Missouri 63197-9000.

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 5th Street
Kansas City, Kansas 66101; and

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENT:
BONITA M. BAGNALL**

Date: 7/23/12

By: Bonnie Bagnall

BONNIE M. BAGNALL
Print Name

Title

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/13/12

By: Crystal M. Green for
Janie Green
Chief
Toxics and Pesticides Branch
Water, Wetlands and Pesticides Division

Date: 9-12-12

By: Jennifer Trotter
Jennifer Trotter
Attorney
Office of Regional Counsel

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

Date: Sept. 14, 2012 Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Bonita M. Bagnall, Respondent
Docket No. TSCA-07-2012-0014

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:

Jennifer trotter
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail to:

Barry S. Kaplan
Attorney at Laaw
Kaplan, Frese & Nine LLP
111 East Church Street
Marshalltown, Iowa 50158

Dated: 9/14/12


Kathy Robinson
Hearing Clerk, Region 7