

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 )  
 )  
 )  
MERLIN and DELORIS TROUTMAN )  
Wichita, Kansas ) Docket No. TSCA-07-2009-00016  
 )  
Respondents )  
 )  
 )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Merlin and Deloris Troutman (Respondents) 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 Respondents have 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 Respondents are Merlin and Deloris Troutman, 13601 E. 31<sup>st</sup> Street South, Lot 7, Wichita, Kansas 67232.

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 Respondents have violated TSCA and federal regulations promulgated thereunder, as follows:

**Count 1**

7. Respondents are, and at all times referred to herein were, “persons” within the meaning of TSCA.

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

9. Respondents are the “lessor,” as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 1440 S. Emporia St. in Wichita, Kansas (“the Property”).

10. Information collected during an EPA review of Respondents’ records on December 2, 2008, shows that Respondents entered into a contract to lease the Property on March 3, 2008.

11. Information collected shows that Respondents failed to provide the lessee of the Property managed by Respondents 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 Respondents.

12. Respondents' 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

13. Respondents are, and at all times referred to herein were, "persons" within the meaning of TSCA.

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

15. Respondents are the "lessor," as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 900 E. 58<sup>th</sup> Street in Wichita, Kansas ("the Property").

16. Information collected during an EPA review of Respondents' records on December 2, 2008, shows that Respondents entered into a contract to lease the Property on January 1, 2007.

17. Information collected shows that Respondents failed to provide the lessee of the Property managed by Respondents 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 Respondents.

18. Respondents' 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

### **CONSENT AGREEMENT**

19. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

20. Respondents admit the factual allegations set forth above.

21. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth above and their right to appeal the Final Order accompanying this Consent Agreement.

22. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

23. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

24. In settlement of this matter, Respondents agree to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits at 418 N. Erie in Wichita, Kansas and 1201, 1207 and 1209 E. English in Wichita, Kansas, which are target housing units owned by Respondents. Respondents shall by and through a certified lead abatement contractor, at the cost of not less Thirteen Thousand Eight Hundred and Sixty Dollars (\$13,860), remove and replace windows within the target housing in accordance with the Respondents' SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

25. Respondents are responsible for ensuring that their contractors, subcontractors, and representatives performing the SEP described in Paragraphs 24 receive a copy of this Consent Agreement and Final Order and all attachments including the approved SEP Work Plan. Respondents are responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

26. Within thirty (30) days of the effective date of the Final Order, Respondents will provide EPA with a copy of the letter sent to the Kansas Department of Health and Environment Healthy Homes and Lead Hazard Prevention Program informing the State of its intent to perform a lead-based paint abatement SEP and requesting procedural information pertaining to performance of the SEP.

27. The total expenditure for the SEP shall be not less than Thirteen Thousand Eight Hundred and Sixty Dollars (\$13,860) and the SEP shall be completed no later than 120 days from the effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

28. Respondents agree that the construction work on all SEPs referenced in Paragraph 24 above will be performed by entities licensed and/or certified to handle, inspect, and/or dispose of lead-based-paint contaminated waste.

29. Within thirty (30) days of completion of the SEP, Respondents 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 Respondents:

**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.  
(Signature)

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

As to EPA:

Stephen 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:

Thomas Langer  
Kansas Department of Health and the Environment  
Healthy Homes and Lead Hazard Prevention Program  
1000 SW Jackson St. Suite 330  
Topeka, KS 66612

30. If the SEP referenced in Paragraph 24 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondents shall pay a stipulated penalty in the amount of Sixteen Thousand Six Hundred and Thirty-Two dollars (\$16,632), minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this Consent Agreement.

(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, Respondents may demonstrate good faith by promptly notifying the EPA Region 7 contact identified in Paragraph 28 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondents are liable under this agreement shall be due and payable within ten (10) days of Respondents' receipt of a written demand from Complainant.

31. Respondents certify that they are not required to perform or develop the SEP by any federal, state or local law or regulation; nor are Respondents 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. Respondents further certify that Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

32. Any public statement, oral or written, in print, film or other media, made by Respondents 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."



33. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty in the amount of One Thousand Five Hundred and Forty Dollars (\$1,540) 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 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this document.

34. Respondents understand that their failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 32 above or any portion of a stipulated penalty as stated in Paragraph 24 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.

35. No portion of the civil penalty or interest paid or monies expended on the SEP by Respondents pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

36. The undersigned representative of Respondents certify that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondents to it.

**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. Respondents shall pay a mitigated civil penalty of One Thousand Five Hundred and Forty Dollars (\$1,540) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondents by name and docket number 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, MO 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 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Kristen Nazar, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

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

**RESPONDENTS**  
**MERLIN AND DELORIS TROUTMAN**

Date: 5-28-09

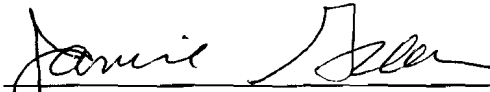
By: Merlin Troutman  
Merlin Troutman owner  
Print Name Title

Date: 5-28-09

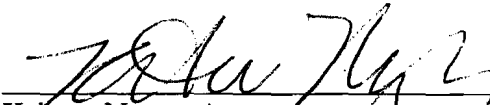
By: Deloris Troutman  
Deloris Troutman owner  
Print Name Title

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

Date: 6/5/09


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

Date: 6/5/09

By:   
Kristen Nazar, Attorney  
Office of Regional Counsel

IN THE MATTER OF Merlin And Deloris Troutman  
Docket No. TSCA-07-2009-0016

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

Date: July 24, 2009   
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

**Attachment A**

**SEP Work Plan**

## Abatement SEP Work Plan

Respondent: *Merlin and Deloris Troutman*

1. Address Of Target Housing:

- (1) 1201 E. English – 4 units
- (2) 1207 E. English – 2 units
- (3) 1209 E. English – 4 units
- (4) 418 N. Erie – 1 unit

2. Property Owner: *Merlin and Deloris Troutman*

3. Properties Are Currently: Occupied

4. Scope Of Work:

*Lead-based paint abatement work to be performed at the target housing identified above will include removal and replacement of 38 lead-based painted windows with lead free windows.*

*All work must be performed by and/or under the supervision of licensed/certified lead-based paint professionals, following the required safe work practices and all other requirements. All work must be performed in accordance with all applicable federal, state, and local laws and regulations.*

5. Licensed Lead-Based Professionals/Firm:

*S&A Construction  
1600 S. Topeka  
Wichita, KS 67211  
(316)262 - 6770*

6. Cost Estimate: \$13,860

7. Planned Work Start Date:

*Erie 6/3/09  
English 5/18/09*

(to be filled out by respondent)

*The Kansas Department of Health and Environment Lead Licensing Program must receive written notice before the work is started on a lead-based paint abatement project. Within thirty days of the effective date of the consent agreement/final order, this written notification must be provided to the state, and copies must be provided to the Sedgwick County Health Department and EPA Region 7.*



8. Estimated work completion date: English 5/21/09 Erie ?  
(to be filled out by respondent)

All work must be completed within ninety days of the effective date of the consent agreement/final order.

9. Report completion date: \_\_\_\_\_  
(to be filled out by EPA)

10. *The SEP Completion Report must be completed and submitted to EPA Region 7, and a copy sent to the state, within thirty days after the completion of the SEP. This report must include:*

- *A detailed description of the SEP as implemented*
- *Itemized costs, documented by copies of purchase orders, receipts or canceled checks*
- *the final abatement report prepared by the contractor, as required by state law.*

*EPA will review the final SEP report and notify the Respondent whether the report is, or is not, satisfactory.*

*Mailing Addresses for Notifications and Reports described above:*

**EPA Region 7**

901 North 5<sup>th</sup> Street

WWPD/TOPE

Attention: Stephven Richard

901 North 5<sup>th</sup> Street

Kansas City, KS 66101

**Kansas Department of Health and Environment**

Lead Licensing Program

Attention: Thomas Langer

1000 SW Jackson, Suite 330

Topeka, KS 66612-1274

**Sedgwick County Health Department**

1900 E. 9<sup>th</sup> Street

Wichita, KS 67214

IN THE MATTER OF Merlin and Deloris Troutman, Respondent  
Docket No. TSCA-07-2009-0016

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:

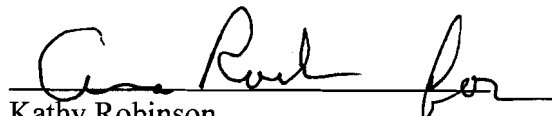
Copy hand delivered to  
Attorney for Complainant:

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

Copy by Certified Mail Return Receipt to:

Merlin and Deloris Troutman  
13601 E. 31<sup>st</sup> South #7  
Wichita, Kansas 67232-9733

Dated: 9/24/09

  
Kathy Robinson  
Hearing Clerk, Region 7