

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

09 JAN -7 PM 2:18

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
AZURE BLUE, L.L.C.)
Sioux City, Iow)
)
)
Respondent)
_____)

Docket No. TSCA-07-2008-0046

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), electronic filing of page 7 of the Consent Agreement and Final Order is authorized in this proceeding.

It is hereby ordered that the Joint Motion to Amend Consent Agreement and Final Order is GRANTED.

Dated:

Jan. 7, 2009



Robert L. Patrick
Regional Judicial Officer

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

09 JAN -7 PM 2:18
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

AZURE BLUE, L.L.C.)
Sioux City, Iowa)

Respondent)

) Docket No. TSCA-07-2008-0046
)
)

AMENDED CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Azure Blue, 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 EPA, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Azure Blue, L.L.C., a limited liability company, incorporated under the laws of Iowa and authorized to conduct business in the State of Iowa

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 phase-out 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.

Factual Background

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

7. Respondent is an "agent" as that term is defined by 40 C.F.R. § 745.103, for the purpose of leasing 2117 Nebraska St #205, Sioux City, Iowa.

8. 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.

Alleged Violations

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

Count 1

9. The facts stated in Paragraphs 1 through 8 above are incorporated by reference as if fully set forth herein.

10. Information collected pursuant to an EPA inspection of Azure Blue, L.L.C. on July 21, 2008, shows that Respondent entered into a contract to lease Apartment 204 of 2121 Nebraska Street, Sioux City, Iowa, on or after June 9, 2008.

11. Information collected shows that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

12. Respondent's failure to perform the acts indicated in Paragraph 11 above are 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.

CONSENT AGREEMENT

13. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

14. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

15. Respondent neither admits nor denies the factual allegations set forth in this Consent Agreement and Final Order.

16. 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 this Consent Agreement and Final Order.

17. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

18. 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.

19. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$7,700 to be paid according to the

payment schedule set forth in Paragraph 1 of the Final Order, below. 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 Consent Agreement and Final Order.

20. The effect of settlement described in Paragraph 19 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 18 of this Consent Agreement and Final Order.

21. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 19 above and further 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, 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.

22. 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.

23. The undersigned representative of Respondent certifies 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 Respondent to it.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and according to the terms of this Consent Agreement and Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of \$7,700, plus interest of \$15.52 over a period of two months for a total payment of \$7,715.52. To total civil penalty shall be paid in two installments. The first payment of \$5,000 shall be paid on or before December 20, 2008. The second payment of \$2,700 plus interest payment of \$15.52 shall be paid on or before January 31, 2009. 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:

EPA-Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 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 North 5th Street
Kansas City, Kansas 66101;

and

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

3. The effective date of this Consent Agreement and Final Order shall be the date on which it is signed by the Regional Judicial Officer.

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

RESPONDENT
AZURE BLUE, L.L.C.

Date:

12/30/08

By:

AZURE BLUE LLC
By Kathleen Burns von Aswege
Kathleen Burns von Aswege
Print Name Title manager

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/19/2008

By: *Jamie Green*
Jamie Green, Chief
Toxics and Pesticides Branch

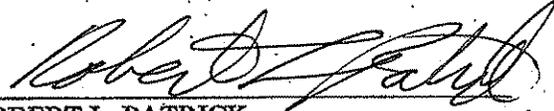
Date: 12/18/08

By: *S. Hertz*
Sara Hertz
Office of Regional Counsel

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

Date:

Jan 7, 2009



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

IN THE MATTER OF AZURE BLUE, L.L.C., Respondent
Docket No. TSCA-07-2008-0046

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Amended Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sarah Hertz
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Mark Cord
Berenstein, Moore, Heffernan, Moeller
& Johnson, L.L.P.
U.S. Bank Building
501 Pierce Street, Suite 300
Sioux City, Iowa 51101

Dated: 1/7/08


Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7