

**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)
)
Fairlane Apartments, LLC) **Docket No. TSCA-07-2007-0015**
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Fairlane Apartments (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, Radiation, Asbestos Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent is Fairlane Apartments, LLC, 1411 SW Fairlawn Rd, #105, Topeka, KS 66604.

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 Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

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

8. Respondent Respondent is the "lessor", as that term is defined by 40 C.F.R. § 745.103, of a multi-unit apartment complex located at 1411-1447 SW Fairlawn Road in Topeka, KS ("the Property").

9. 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.

10. Information collected during an EPA inspection performed at the Property on May 8, 2006 shows that Respondent entered into multiple contracts to lease target housing units in the Property between November 6, 2002 and May 8, 2006.

11. Information collected shows that Respondent failed to provide the lessees of the target housing units at the Property with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees were obligated under a contract to lease the target housing units at the Property.

12. Respondent's failures to provide an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities prior to lessees' obligation under contract in all contracts to lease target housing units at the Property executed between November 6, 2002 and May 8, 2006 constitute violations of 40 C.F.R. §§ 745.107, 745.113, and 745.115, 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. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

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

15. 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.

16. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

17. 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.

18. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$1000.00 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.

19. The effect of settlement described in paragraph 18 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 17 of this Consent Agreement and Final Order.

20. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 18 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 shall pay a mitigated civil penalty of \$1000.00 within thirty (30) days of the effective date of this Final Order. 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
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

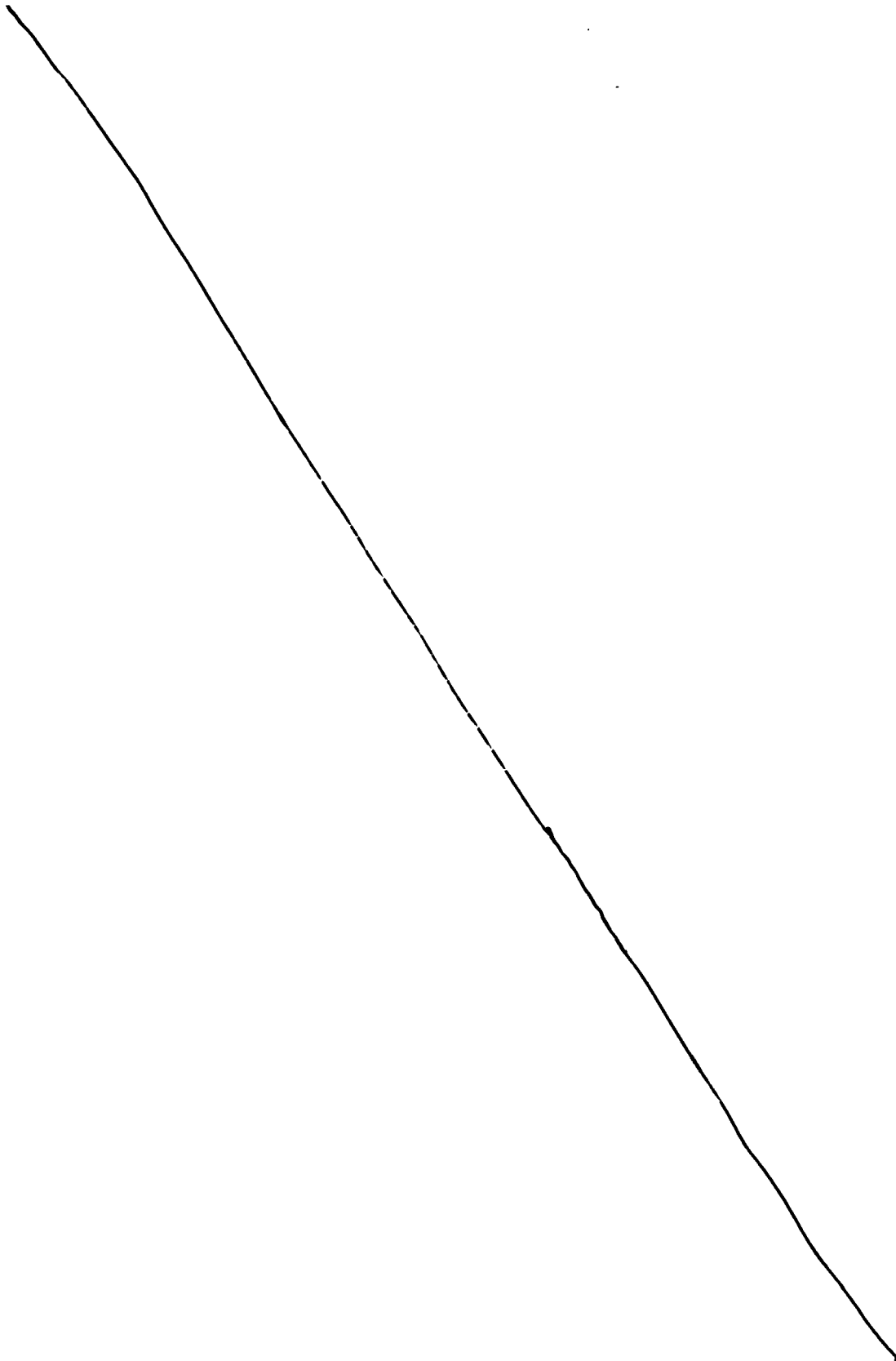
2. A copy of the check shall simultaneously be sent to the following:

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

Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 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
FAIRLANE APARTMENTS. LLC

Date: 12-20-06

By: Suzanne Morrissey
SUZANNE MORRISSEY MANAGER
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/26/06

By: Jammy A. Hacker for
Naima Halim-Chestnut, Acting Chief
Radiation, Asbestos, Lead and Indoor Programs Branch

Date: 12/26/06

By: CR Dudding
Chris R. Dudding
Office of Regional Counsel



IN THE MATTER OF Fairlane Apartments LLC, Respondent
Docket No. FIFRA-07-2007-0015

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:

Chris R. Dudding
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:

Suzanne Morrissey, Manager
Fairlane Apartments, LLC
1411 Fairlawn Road, #105
Topeka, Kansas 66604

Dated: 12/27/06


Kathy Robinson
Hearing Clerk, Region 7