

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5th STREET

KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

03 JUL -8 PM 4:05

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

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SKYWAY PROPERTIES LLC

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Independence, Missouri

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Docket No. TSCA-07-2008- 0023

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Respondent

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CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Skyway Properties LLC (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, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Skyway Properties LLC, a limited liability company authorized to conduct business in the state of Missouri.

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 is the "lessor", as that term is defined by 40 C.F.R. § 745.103, of 6638 East Sixteenth Street, Kansas City, Missouri.

9. The property referenced above is "target housing" as that term is defined by 40 C.F.R. § 745.103.

10. Information collected shows that Respondent entered into a contract to lease 6638 East Sixteenth Street, Kansas City, Missouri, on or after April 14, 2006.

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 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 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.

Count 2

13. Respondent is the “lessor”, as that term is defined by 40 C.F.R. § 745.103, of 1237 White Avenue, Kansas City, Missouri.

14. The property referenced above is “target housing” as that term is defined by 40 C.F.R. § 745.103.

15. Information collected shows that Respondent entered into a contract to lease 1237 White Avenue, Kansas City, Missouri on or after June 6, 2006.

16. 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.

17. Respondent's 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 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

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

19. Respondent admits the factual allegations set forth above.

20. 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.

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

22. 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.

23. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Three Thousand Eight Hundred and Fifty Dollars (\$ 3,850) to be paid according to terms set forth in Paragraph 1 of the Final Order below.

24. The effect of settlement described in Paragraph 23 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 22 above.

25. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 23 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 Fifteen Dollars (\$15) will be imposed after thirty (30) days and an additional Fifteen Dollars (\$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.

26. In settlement of this matter, Respondent agrees to complete the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits at 447 Quincy, Kansas City, Missouri, 915 Fremont, Kansas City, Missouri, and 2904 Van Brunt, Kansas City, Missouri: Respondent shall, by and through a certified lead abatement contractor, perform removal and replacement of the items in accordance with Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

27. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to the Missouri Department of Health & Senior Services informing the state of its intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

28. The total expenditure for the SEP shall be not less than Eleven Thousand Five Hundred and Fifty Dollars (\$ 11,550) including the work completed, and the SEP shall be completed no later than ninety (90) days after the Effective date of this Consent Agreement and Final Order. All work required to complete the SEP shall be performed in compliance with all Federal, State, and Local Laws and Regulations.

29. Within thirty (30) days of completion of the SEP, Respondent 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 an official authorized to sign on behalf of Skyway Properties LLC:

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.

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

As to EPA:

Crystal McIntyre, WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

As to the State:

Brandon Rekus, Lead Licensing Program Manager
Missouri Department of Health and Senior Services
930 Wildwood, P.O. Box 570
Jefferson City, Missouri 65102.

30. In the event that Respondent fails to complete the SEP in accordance with this Order or to the extent that actual expenditures for the SEP do not equal or exceed the amount of money required to be expended on the SEP as set forth above, Respondent shall be liable for stipulated penalties as follows:

(i) Except as provided in subparagraph ii immediately below, for a SEP which has not been completed to the satisfaction of EPA in accordance with the terms of this Order, Respondent shall pay a stipulated penalty of Eleven Thousand Five Hundred and Fifty Dollars (\$ 11,550).

(ii) If the SEP is completed to the satisfaction of EPA but Respondent's actual expenditures are less than 90 percent of the amount of money required to be expended on the SEP, Respondent shall pay a stipulated penalty of One Thousand Five Hundred Dollars (\$ 1,500).

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

31. Respondent certifies that it is not required to perform or develop the SEP by any Federal, State or Local Law or Regulation; nor is Respondent 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. Respondent further certifies that Respondent has not received, and is 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 Respondent 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. Respondent agrees not to claim any funds expended in the performance of the SEPs as a deductible business expense for the purpose of Federal, State, or Local taxes.

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, in settlement of the allegations set forth in the Consent Agreement, shall pay by Cashier's or Certified Check, a civil penalty, for the violations cited herein, in the amount of Three Thousand Eight Hundred and Fifty Dollars (\$ 3,850). 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:

US Environmental Protection Agency
Fines and Penalties, Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 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 N. Fifth Street
Kansas City, Kansas 66101; and

Kelley Catlin, Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.


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

RESPONDENT

SKYWAY PROPERTIES LLC

Date: 7-1-2008 By:

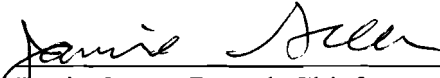

Phil Williams Member
Print Name Title

IN THE MATTER OF Skyway Properties LLC
Docket No. TSCA-07-2008-0023

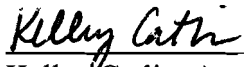
COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/18/08


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

Date: 7/17/08

By: 
Kelley Catlin, Attorney
Office of Regional Counsel

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

Date: July 8, 2008



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

Attachment A

**WORK PLAN FOR SUPPLEMENTAL ENVIRONMENTAL
ABATEMENT PROJECTS**

Era Environmental & Safety, Inc. proposes to perform the following abatement projects in conformance with the Supplemental Environmental Project policies of EPA as a part of the settlement agreement between Skyway Properties, LLC and EPA. Each abatement project will be completed under the oversight of a certified lead abatement contractor and performed in conformance with applicable regulations.

Projects to be Completed

This building was built in 1950 and contains one unit. Lead paint was confirmed at the site by testing completed in April, 2008. Pursuant to the bid attached as Exhibit A of this letter, Era Environmental & Safety, Inc. will perform an abatement project consisting of replacing windows, repairing and painting trim and casings at 447 Quincy, Kansas City, MO.

This building was constructed in 1915 and contains one unit. Lead paint was confirmed at the site by testing conducted in May, 2008. Pursuant to the bid attached as Exhibit A to this letter, Era Environmental & Safety, Inc. will perform an abatement project consisting of replacing windows, repairing and painting trim and casings at 915 Fremont, Kansas City, MO.

This building was constructed in 1952 and contains one unit. Lead paint was confirmed at the site by testing conducted in June, 2008. Pursuant to the bid attached as Exhibit A to this letter, Era Environmental & Safety, Inc. will perform an abatement project consisting of replacing windows, repairing and painting trim and casings at 2904 Van Brunt, Kansas City, MO.

Era Environmental & Safety, Inc., and Skyway Properties, LLC will provide their contracts or purchase orders for performance of this work.

Legal Guidelines for SEP Projects

The lead abatement projects set forth above all fall within the SEP policy guidance and legal guidelines for SEP projects. These abatement projects are not inconsistent with any provision of the underlying statutes. These lead abatement projects directly advance the goals of the Residential Lead Based Paint Hazard Reduction Act of 1992 by eliminating lead paint from target housing and eliminating potential lead paint health hazards from such units. These abatement projects have a strong nexus with that statute for the reason that the projects will reduce the likelihood that similar violations (alleged non-disclosure) will occur in the future. In addition, the projects will reduce the potential for adverse impact to public health, and reduce other overall risks to public health addressed by the alleged violations at issue. The abatement projects are also within the immediate geographic area of the alleged violations.

The funding for these abatement projects is in no way controlled by EPA nor will EPA gain any resources as a result of such projects. Era Environmental & Safety, Inc., and Skyway Properties, LLC will not use any federal funds or grants to perform these abatement projects.

Categories of Supplemental Environmental Projects

Lead abatement projects are common settlement tools used in alleged violations of the Lead Based Paint Disclosure Rules. EPA has also expressed a preference for

abatement SEP projects which eliminate the risk at a facility, as opposed to environmental assessment or audit SEP projects which may be interpreted as identifying but not eliminating the alleged risks.

Lead paint abatement projects fall within the third type of SEP described in the SEP guidance, the "Pollution Reduction" category of Supplemental Environmental Projects, for the reason that such projects result "in a decrease in the amount and/or toxicity of [a] hazardous substance: that has previously been generated or released into the environment. Elimination of the lead paint by abatement of the target housing units "employs recycling, treatment, containment or disposal techniques" which reduce the amount of lead in the environment and consequently, reduces the potential for lead pain based health related effects and other harmful consequences of lead in the environment.

To the extent that lead pain abatement projects do not fit within one of the seven specific categories of SEP projects, these projects would fit within the "catch-all" eighth category described in the SEP policy. This category includes "projects determined by the case team to have environmental merit which do not fit within at least one of the seven categories above, but are otherwise fully consistent with all other provisions of the SEP policy."

Conclusion

Era Environmental & Safety, Inc. proposes to perform the above referenced abatement projects at 447 No. Quincy, Kansas City, MO and 2904 Van Brunt, Kansas City, MO and 915 Fremont, Kansas City, MO. Those projects will be completed no later than July 18, 2008. Costs for the three projects combined will equal \$ 11,550.00.

These projects combined will equal the \$ 11,550.00 in SEP credit necessary pursuant to the settlement agreement entered into between Skyway Properties, LLC and EPA.

IN THE MATTER OF Skyway Properties LLC, Respondent
Docket No. TSCA-07-2008-0023

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:

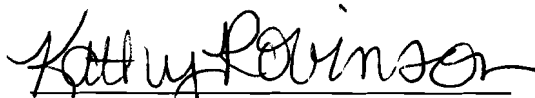
Copy hand delivered to
Attorney for Complainant:

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

Original by Certified Mail Return Receipt to:

Dean Walker
1613 South Claremont
Independence, Missouri 64052

Dated: 7/9/08


Kathy Robinson
Hearing Clerk, Region 7