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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BILLY AND DANIELLE
MCLENDON,

Woodland, Washington,

Respondents.

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DOCKET NO. TSCA-10-2015-0016

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 1018(b)(5) of the Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 2615(a), and Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a).

1.2. Pursuant to Section 1018(b)(5) of the Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 2615(a), Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Billy and Danielle McLendon (“Respondents”) agree to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of TSCA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1. Pursuant to Section 1018(b)(5) of the Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), a person violates Section 409 of TSCA, 15 U.S.C. § 2689, if the person fails to disclose lead-based paint hazards in target housing which is offered for sale or lease in accordance with the regulations promulgated at 40 C.F.R. Part 745 Subpart F.

3.2. “Target housing” is defined at Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103 to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

3.3. “Lessor” is defined at 40 C.F.R. § 745.103 to mean any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships,

corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

3.4. "Lessee" is defined at 40 C.F.R. § 745.103 to mean any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

3.5. The residential dwelling located at 171 Bozarth Avenue, Woodland, Washington ("Property") was constructed prior to 1978 and is therefore "target housing" under 40 C.F.R. § 745.103.

3.6. Respondents offered the Property for lease and are therefore "lessors" under 40 C.F.R. § 745.103.

3.7. Respondents offered the Property for lease on two occasions from 2010 to 2012 (each, a "Lease").

COUNT 1

3.8. Under 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment to or within the contract, a Lead Warning Statement containing language specified by 40 C.F.R. § 745.113(b)(1).

3.9. For each of the two Leases, Respondents failed to include within or as an attachment to each lease a Lead Warning Statement containing the language specified in 40 C.F.R. § 745.113(b)(1), in violation of 40 C.F.R. § 745.113(b)(1).

COUNT 2

3.10. Under 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment to or within the contract, a statement by the lessor disclosing the

presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or a statement indicating no knowledge of the presence of lead-based paint hazards.

3.11. For each of the two Leases, Respondents failed to include within or as an attachment to each Lease a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Property, or a statement indicating no knowledge of the presence of lead-based paint hazards, in violation of 40 C.F.R. § 745.113(b)(2).

COUNT 3

3.12. Under 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee or, if no such records or reports are available, a statement so indicating.

3.13. For each of the two Leases, Respondents failed to include within or as an attachment to each Lease a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the Property that were provided to the lessees or a statement indicating that no such records or reports are available, in violation of 40 C.F.R. § 745.113(b)(3).

COUNT 4

3.14. Under 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment to or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2)–(b)(3), a list of any records and reports relevant to lead-based paint hazards required by 40 C.F.R. § 745.113(b)(3), and the EPA-approved pamphlet entitled “Protect Your Family from Lead in Your Home” required by 15 U.S.C. § 2696.

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations of this Consent Agreement.

4.2. Respondents neither admit nor deny the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and with respect to Respondents, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. After considering these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$1,000.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondents must note on the check the title and docket number of this action.

3.15. For each of the two Leases, Respondents failed to include within or as an attachment to each Lease a statement by the lessees affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2)–(b)(3), a list of any records and reports relevant to lead-based paint hazards required by 40 C.F.R. § 745.113(b)(3), and the EPA-approved pamphlet entitled “Protect Your Family from Lead in Your Home” required by 15 U.S.C. § 2696, in violation of 40 C.F.R. § 745.113(b)(4).

COUNT 5

3.16. Under 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include, as an attachment to or within each lease contract, the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

3.17. For each of the two Leases, Respondents failed to include within or as an attachment to each lease contract the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature in violation of 40 C.F.R. § 745.113(b)(6).

ENFORCEMENT

3.18. Pursuant to Section 1018(b)(5) of the Residential Lead-based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(5), a violation of the Disclosure Rule, 40 C.F.R. Part 745 Subpart F, is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689.

3.19. Pursuant to Section 1018(b)(5) of the Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$16,000 for each violation each day such a violation continues.

4.6. Concurrently with payment, Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Smith.candace@epa.gov

Kim Farnham
U.S. Environmental Protection Agency
Region 10, Mail Stop AWT-150
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Farnham.kim@epamail.epa.gov

4.7. If Respondents fail to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondents may be subject to a civil action to collect the assessed penalty under Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4). In any collection action, the validity, amount, and appropriateness of the penalty are not subject to review.

4.8. If Respondents fail to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, Respondents shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned Respondents certify that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

4.11. The undersigned Respondents also certify that, as of the date of Respondents' signature of this Consent Agreement, Respondents have corrected the violations alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondents expressly waive any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order. Respondents expressly waive the notice requirement and their opportunity to request a hearing on the Final Order pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2).

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.15. Respondents consent to the issuance of any specified compliance or corrective action order, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

FOR RESPONDENTS:

12/1/14

Billy McLendon

Billy McLendon

12/1/14

Danielle McLendon

Danielle McLendon

DATED:

FOR COMPLAINANT:

12/8/14

Kate Kelly

Kate Kelly, Director
Office of Air, Waste and Toxics
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. TSCA-10-2015-0016
)	
BILLY AND DANIELLE)	FINAL ORDER
MCLENDON,)	
)	
Woodland, Washington,)	
)	
Respondents.)	
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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under TSCA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 9th day of December 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Billy and Danielle McLendon, Docket No.: CAA-10-2015-0016**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. McLendon
306 Insel Road
Woodland, WA 98674

DATED this 10th day of Dec., 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

