

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 )  
 ) Docket No. TSCA-07-2010-0016  
 )  
PAUL BROWN )  
ST. LOUIS, MISSOURI )  
 )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and 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 Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**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 (CAFO) 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.

## **Section II**

### **Parties**

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Paul Brown, 5201 Blow Street in Saint Louis, Missouri 63109.

## **Section III**

### **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.

#### **Section IV**

##### **General Factual Allegations**

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

7. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, of a residential housing unit located at 3839 Shaw Avenue in St. Louis, Missouri (Property).

8. The Property was constructed before 1978.

9. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

##### **Violations**

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

##### **Count 1**

11. The facts stated in Paragraphs 6 through 9 above are herein incorporated.

12. Information collected in response to an Information Request Letter received on November 20, 2009, showed that Respondent entered into a contract to lease the target housing unit located at 3839 Shaw Avenue on June 27, 2008.

13. Information collected showed that Respondent failed to provide the lessees of

3839 Shaw Avenue in St. Louis, Missouri with an EPA-approved lead hazard information pamphlet before lessees were obligated under contract to lease the target housing unit.

14. Respondent's failure to perform the acts indicated in Paragraph 13 above 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.

### **Section V**

#### **Consent Agreement**

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

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

17. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

19. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

20. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty based on the Ability To Pay (ATP) determination. The ATP determination was based on the Respondent's Ability To Pay claim and financial information submitted to EPA. This financial information was reviewed, and it was determined that a mitigated civil penalty of Five Hundred Twenty Five Dollars (\$525) was

appropriate. The Respondent agrees that the mitigated civil penalty of Five Hundred Twenty Five Dollars (\$525) will be paid within thirty (30) days of the effective date of the Final Order.

21. Payment of this civil penalty in full 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.

22. Respondent understands that its failure to timely pay any portion of the civil penalty 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 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.

## **Section VI**

### **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 civil penalty of Five Hundred Twenty Five Dollars (\$525) within thirty (30) days of the effective date of this Final Order. Such payment shall identify

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, 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 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Jennifer Trotter  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

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

**RESPONDENT  
PAUL BROWN**

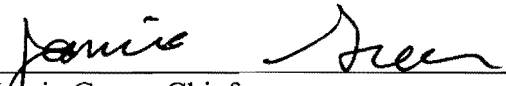
Date: 7/16/10

By: 


Paul Brown  
Print Name Title

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

Date: 8/12/10

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

Date: 7-28-10

By:   
Jennifer Trotter  
Office of Regional Counsel



IN THE MATTER OF Paul Brown, Respondent  
Docket No. TSCA-07-2010-0016

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:

Jennifer Trotter  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Paul Brown  
5201 Blow ~~Street~~ <sup>Street</sup>  
St. Louis, Missouri 63109

Dated: 8/4/10

  
Kathy Robinson  
Hearing Clerk, Region 7