

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)

TOPE PROPERTIES, LLC)
St. Louis, Missouri)

Respondent)

Docket No. TSCA 07-2008-0035

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Tope 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 Renovation, 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 Tope Properties, LLC.

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 lessor 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 I

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

8. The Properties leased by Respondent were constructed before 1978; therefore, they are "target housing" as that term is defined by 40 C.F.R. § 745.103.

9. Respondent is the "lessor," as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at 8891 Ramona Avenue in St. Louis, Missouri ("the Property").

10. Information collected during an EPA review of Respondent's records on January 18, 2008, shows that Respondent entered into a contract to lease the Property on October 21, 2006.

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

12. Respondent's failure to perform the acts indicated in Paragraph 11 above are violations of 40 C.F.R. 745.107(a)(1)), 40 C.F.R. § 745.113(b)(2) through (b)(6) 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 admits 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 attorney's 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 mitigated civil penalty in the amount of five hundred dollars (\$500.00) to be paid within thirty (30) days of the effective date of the Final Order.

19. 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.

20. 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, 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.

21. In settlement of this matter, Respondent has completed the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits: Respondent had a lead-based paint inspection performed, by a licensed inspector at 8891 Ramona Avenue in St. Louis, Missouri, to determine the presence of lead-based paint and or lead-based paint hazards.

22. The total expenditure for the SEP was \$750 and the SEP was completed on April 24, 2008. All work required to complete the SEP was performed in compliance with all federal, state, and local laws and regulations.

23. Respondent has submitted a SEP Completion Report to EPA containing 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 following certification signed by a representative of Tope 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.

24. Respondent certifies that it was 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.

25. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

26. 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."

27. 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, 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 \$500 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:

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 N. 5th Street
Kansas City, Kansas 66101; and

Jennifer Trotter, Attorney, Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

IN THE MATTER OF Tope Properties, LLC
Docket No. TSCA-07-2008-0035

RESPONDENT
TOPE PROPERTIES, LLC

Date: Aug 26, 2008

By: 

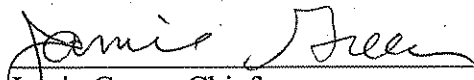
Glenn Tope
Print Name

Manager
Title

IN THE MATTER OF Tope Properties, LLC
Docket No. TSCA-07-2008-0035

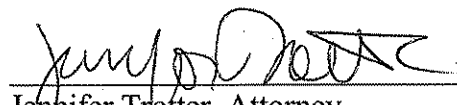
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/3/08



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

Date: 9/3/8



Jennifer Trotter, Attorney
Office of Regional Counsel

IN THE MATTER OF Tope Properties, LLC
Docket No. TSCA-07-2008-0035

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

Date: September 9, 2008 

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

IN THE MATTER OF Tope Properties, LLC, Respondent
Docket No. TSCA-07-2008-0035

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 VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Tope Properties, LLC
8765 Natural Bridge Road
St. Louis, Missouri 63121

Dated: 9/5/08



Kathy Robinson
Hearing Clerk, Region 7