

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
BEFORE THE ADMINISTRATOR

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2012 JUN 27 AM 10: 36

In the Matter of

Scott Rentals

Respondent

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Docket No. TSCA-07-2012-0019

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region 7 (EPA) and Scott Rentals (Respondent) has 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 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 Scott Rentals which is a lessor of residential housing in Horton, Kansas, and owned and operated by John M. and Katherine A. Scott.

## **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(s)" as defined by 40 C.F.R. § 745.103, for the lease of 1141 Central Avenue and 129 East 6<sup>th</sup> Street, Horton, Kansas (the Properties).
8. The Properties were constructed before 1978.
9. The Properties are "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 10 above are herein incorporated.
12. Respondent entered into a contract to lease the target housing unit located at 1141 Central Avenue on or about September 16, 2011.
13. Respondent failed to provide the lessee of 1141 Central Avenue with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under contract to lease the target housing unit.

14. Respondent's failure to perform the acts indicated in Paragraph 13 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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.

**Count 2**

15. The facts stated in Paragraphs 6 through 10 above are herein incorporated.

16. Respondent entered into a contract to lease the target housing unit located at 129 East 6<sup>th</sup> Street on or about May 1, 2010.

17. Respondent failed to provide the lessee of 129 East 6<sup>th</sup> Street with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under contract to lease the target housing unit.

18. Respondent's failure to perform the acts indicated in Paragraph 17 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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.

**Section V**

**Consent Agreement**

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

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

21. 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.

22. 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.

23. 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.

24. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

25. The effect of settlement described in Paragraph 26 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 23 above of this Consent Agreement and Final Order.

26. 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.

27. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Three Thousand Nine Hundred Seventy-Six Dollars (\$3,976.00) as set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order, below.

28. 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 Three Thousand Nine Hundred Seventy-Six Dollars (\$3,976.00) 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.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

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

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> 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.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT**  
Scott Rentals

Date: 6-23-12

By: John M. Scott

Print Name: John M. Scott

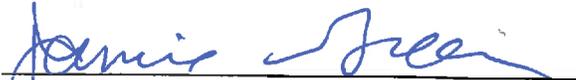
Date: 6-23-12

By: Katherine A. Scott

Print Name: Katherine A. Scott

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

Date: 6/26/12

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

Date: 6/25/12

  
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Kelley Catlin  
Office of Regional Counsel

**IT IS SO ORDERED.**

Date: June 27, 2012

  
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Robert L. Patrick  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Scott Rentals, Respondent  
Docket No. TSCA-07-2012-0019

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing 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 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

John M. and Katherine A. Scott  
Scott Rentals  
1147 Central Avenue  
Horton, Kansas 66439

Dated: 10/27/12



Kathy Robinson  
Hearing Clerk, Region 7