

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

U.S. EPA-REGION 3-RHC  
FILED-18DEC2018pm3:28

In Re: :  
: Docket No. TSCA-03-2019-0041  
Smith Rentals LLC :  
426 Drummond Street :  
Morgantown, West Virginia 26505, :  
Respondent. :  
: Proceeding under the  
: Toxic Substances Control Act, Section 16

CONSENT AGREEMENT

I. Preliminary Statement

1. This administrative consent agreement is entered into by and between the Director, Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region III (Complainant), and Smith Rentals LLC (Respondent), pursuant to Section 16 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice). The Consolidated Rules of Practice at 40 C.F.R. § 22.13(b) provide, in pertinent part, that “where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).”

2. This administrative consent agreement and the accompanying final order (CAFO) address violations set forth herein, which occurred with respect to twenty-two (22) lease transactions involving Respondent’s twenty-two (22) residential properties listed on Attachment A to this consent agreement. The State of West Virginia is within the jurisdiction of EPA - Region III.

II. General Provisions

1. The authority to issue the accompanying final order has been duly delegated to the Regional Judicial Officer of EPA - Region III.

2. On October 28, 1992, the Housing and Community Development Act of 1992 was enacted as a federal statute. Title X of that Act is referred to as the Residential Lead-Based Paint Hazard Reduction Act of 1992. Among other things, Title X added new statutory provisions to Title 42 of the United States Code (new Chapter 63A at 42 U.S.C. §§ 4851 to 4856). Section 1018 of Title X, codified at 42 U.S.C. § 4852d, addressed disclosure of information concerning lead upon transfer of residential property, and required the Secretary of the federal Department of Housing and Urban Development and the Administrator of the federal Environmental Protection Agency to promulgate regulations for the disclosure of lead-based paint

hazards in target housing which is offered for sale or lease. These regulations were proposed on November 2, 1994 at 59 Federal Register 54984 and promulgated on March 6, 1996 at 61 Federal Register 9064. The promulgated regulations were effective on March 6, 1996, with the exception of certain regulations which became effective on April 22, 1996. For owners of more than four residential dwellings, the requirements of these regulations became applicable on September 6, 1996, and for owners of one to four residential dwellings, the requirements became applicable on December 6, 1996. Certain of these promulgated regulations addressed Lead-Based Paint Poisoning Prevention in Certain Residential Structures and are codified in Title 40 of the Code of Federal Regulations at 40 C.F.R. Part 745. Subpart F of Part 745 addresses Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property and is referred to as the Real Estate Notification and Disclosure Rule for Lead-Based Paint (Disclosure Rule). Among other things, the Disclosure Rule requires that lessors of “target housing” comply with certain notification and disclosure requirements for lease transactions of residential properties or dwellings.

3. The term “target housing” is defined as follows at 40 C.F.R. Part 745, Subpart F, § 745.103:

“Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.”

4. On October 28, 2015, EPA conducted an inspection of Respondent’s records. Based upon information gathered during the course of EPA’s investigation, EPA concluded that Respondent had violated requirements of 40 C.F.R. Part 745, Subpart F, with respect to each of the lease transactions identified in Section I, Paragraph 2 above.

5. By letter dated January 8, 2018, EPA provided Respondent with notice of the alleged violations, and provided Respondent with an opportunity to “show cause” why a formal administrative complaint should not be filed against Respondent and/or an opportunity to engage in good faith settlement discussions.

6. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of this CAFO. Respondent agrees not to contest jurisdiction with respect to the issuance, execution and enforcement of this CAFO.

7. For the purpose of this proceeding, except as provided in Section II, Paragraph 6 immediately above, Respondent neither admits nor denies the specific factual allegations in this consent agreement.

8. For the purpose of this proceeding, Respondent consents to the terms and conditions of this CAFO.

9. This CAFO records all terms and conditions of the settlement.

### **III. Findings of Fact and Conclusions of Law**

1. At the time of the 22 lease transactions identified in Section I, Paragraph 2 above, the residential properties involved in these 22 lease transactions each met the definition of “target housing” to which the notification and disclosure requirements for lease transactions contained in the Disclosure Rule apply.
2. At the time of the 22 lease transactions identified in Section I, Paragraph 2 above, Respondent was the owner of each of the residential properties involved in these 22 lease transactions.
3. At the time of the 22 lease transactions identified in Section I, Paragraph 2 above, Respondent was the lessor of each of the residential properties involved in these 22 lease transactions.

#### **Failure to Include Prescribed Lead Warning Statement In Lease Contract**

4. 40 C.F.R. § 745.113(b)(1) requires a lessor of “target housing” to include, as an attachment or within the contract to lease target housing, in the language of the contract, the prescribed Lead Warning Statement. With regard to each of the lease contracts for the twenty-two (22) residential properties listed on Attachment A to this consent agreement, Respondent failed to comply with this requirement.
5. Respondent’s failures to comply with this requirement constitute violations of Section 1018(b)(5) of Title X of the Housing and Community Development Act of 1992, 42 U.S.C. § 4852d(b)(5), and violations of Section 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed for each violation under Section 16 of TSCA, 15 U.S.C. § 2615.

#### **Failure to Include Lessor Lead Disclosure Statement In Lease Contract**

6. 40 C.F.R. § 745.113(b)(2) requires a lessor of “target housing” to include, as an attachment or within the contract to lease target housing, in the language of 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 indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. With regard to each of the lease contracts for the twenty-two (22) residential properties listed on Attachment A to this consent agreement, Respondent failed to comply with this requirement.
7. Respondent’s failures to comply with this requirement constitute violations of Section 1018(b)(5) of Title X of the Housing and Community Development Act of 1992, 42 U.S.C. § 4852d(b)(5), and violations of Section 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed for each violation under Section 16 of TSCA, 15 U.S.C. § 2615.

### **IV. Civil Penalty**

1. As provided in 40 C.F.R. Part 745, Subpart F, § 745.118(e), failures to comply with the Disclosure Rule requirements noted above are violations of 42 U.S.C. § 4852d(b)(5).

2. 42 U.S.C. § 4852d(b)(5) provides that:

“It shall be a prohibited act under [S]ection 409 of the Toxic Substances Control Act [15 U.S.C. 2689] for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the penalty for each violation applicable under [S]ection 16 of that Act [15 U.S.C. 2615] shall not be more than \$10,000.”

As of the time of the violations set forth in Section III above, the original maximum statutory civil penalty in 42 U.S.C. § 4852d(b)(5) of \$10,000 for each violation had been increased (on 12/11/08, effective 1/12/09) to \$16,000 for each violation (See 40 C.F.R. Part 19, § 19.4, Table 1).

3. As noted above, violations of 42 U.S.C. § 4852d(b)(5) are also violations of Section 409 of TSCA, 15 U.S.C. § 2689, for which EPA may seek to assess civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

4. In settlement of the violations set forth in Section III above, and for the purpose of this proceeding, Respondent consents to the assessment of, and agrees to pay, a civil penalty in the amount of fifty-six thousand one hundred and fourteen dollars (\$56,114) in the manner specified herein.

5. The settlement amount of fifty-six thousand one hundred and fourteen dollars (\$56,114) is based upon Complainant's consideration of, and application of, the statutory penalty factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B) [which include the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, 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], and EPA's applicable penalty calculation policy for this type of case, EPA's Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007, and EPA's applicable penalty inflation policy for this particular case, EPA's December 6, 2013 Memorandum from Cynthia Giles, in keeping with 40 C.F.R. Part 19 (Adjustment of Civil Monetary Penalties for Inflation).

6. Respondent shall pay the civil penalty of fifty-six thousand one hundred and fourteen dollars (\$56,114) no later than thirty (30) calendar days after the effective date of this CAFO. Respondent must pay the entire civil penalty by this date in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO.

7. Payment of the civil penalty set forth in Section IV, Paragraph 4 above shall be made by cashier's check, certified check, electronic wire transfer, the Automated Clearing House, or online internet payment, as specified below. Payment, regardless of how it is made, is to be made payable to Treasurer, United States of America, and shall reference the above case caption and docket number (TSCA-03-2019-0041).

8. Instructions for making payment of the civil penalty set forth in Section IV, Paragraph 4 above using the methods described in Section IV, Paragraph 7 immediately above are provided at the following EPA website addresses:

<http://www2.epa.gov/financial/makepayment>

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

9. At the same time that payment is made, regardless of how it is made, copies of any check or written documentation confirming any electronic wire transfer, ACH/REX payment, or online internet payment shall be mailed to Regional Hearing Clerk (3RC00), EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to James M. Baker, Senior Assistant Regional Counsel (3RC10), EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and to Annie Hoyt, Lead Compliance Officer (3LC41), EPA - Region III, Environmental Science Center, 701 Mapes Road, Fort Meade, Maryland 20755-5350.

10. If Respondent fails to timely pay any portion of the civil penalty assessed under this consent agreement, EPA may:

a. request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

d. (i) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

11. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

12. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such

interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

13. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue, 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

14. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, 31 C.F.R. § 901.9(d).

15. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the civil penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, no later than thirty (30) calendar days after the effective date of this CAFO, as provided in Section IV, Paragraph 6 above.

16. Complainant and Respondent enter into this consent agreement in order to settle the violations specifically set forth in Section III of this consent agreement.

17. This settlement pursuant to 40 C.F.R. § 22.18(b) of the Consolidated Rules of Practice:

a. shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein; and

b. shall not in any case affect the right of EPA or the United States to pursue Federal civil penalties for other violations of law; and

c. shall not in any case 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.

## V. Settlement

1. For the purpose of this proceeding, Respondent waives any right to contest the allegations in this consent agreement pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.18(b)(2), waives his right to appeal the final order accompanying this consent agreement, waives his opportunity for a hearing on the record in accordance with 5 U.S.C. §§ 554 and 556 under TSCA, and waives his right to judicial review under TSCA.

2. The effective date of this CAFO is the date on which the CAFO is filed with the Regional Hearing Clerk of EPA - Region III.

3. Respondent agrees to pay its own costs and attorney fees.

4. Respondent agrees that this CAFO shall apply to, and be binding upon, Respondent, its directors, officers, employees, servants, agents, successors and assigns.
5. By signing this consent agreement, the undersigned representative of Respondent certifies that he is fully authorized to execute and enter into the terms and conditions of this consent agreement and has the legal capacity to bind Respondent to the terms and conditions of this consent agreement.
6. By signing this consent agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
7. Penalties paid pursuant to this consent agreement shall not be deductible for purposes of federal taxes.
8. This consent agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the settlement of the above-captioned matter and the subject matter hereof. There are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this consent agreement and the accompanying final order.
9. Nothing in this consent agreement or the accompanying final order shall be construed to affect or limit in any way the obligation of Respondent to comply with all applicable provisions the Housing and Community Development Act of 1992 and TSCA and their implementing regulations and any other applicable federal, state or local laws and regulations, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Compliance with this consent agreement and accompanying final order shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.
10. By signing this consent agreement, Respondent certifies that Respondent is, as of the date of that signature, currently in compliance with all applicable requirements of 40 C.F.R. Part 745, Subpart F. On and after the date of that signature, Respondent agrees to maintain full compliance with all applicable requirements of 40 C.F.R. Part 745, Subpart F.
11. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution, and to the reservation of rights, set forth in 40 C.F.R. § 22.18(c).

12. Further, Complainant reserves any rights and remedies available to it under the Housing and Community Development Act of 1992 and the regulations promulgated thereunder, TSCA and the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

12/11/2018

Date

Respondent:

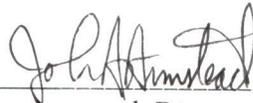


Andrew C. Smith  
Smith Rentals LLC

Complainant:

12.17.18

Date

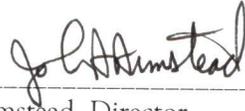


John Armstead, Director  
Land and Chemicals Division  
United States Environmental Protection Agency  
Region III

Accordingly, the Land and Chemicals Division of EPA - Region III recommends that the Regional Administrator of EPA - Region III or the Regional Judicial Officer of EPA - Region III ratify this CONSENT AGREEMENT and issue the accompanying FINAL ORDER (Docket No. TSCA-03-2019-0041). The amount of the recommended civil penalty assessment is fifty-six thousand one hundred and fourteen dollars (\$56,114).

12.17.18

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Date



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John Armstead, Director  
Land and Chemicals Division  
United States Environmental Protection Agency  
Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III

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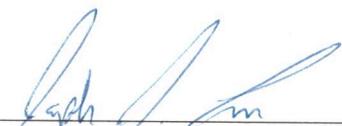
FINAL ORDER

Complainant, Director, Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region III, and Respondent, Smith Rentals LLC, have executed a document entitled "CONSENT AGREEMENT", which I hereby ratify as a consent agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22 [with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)]. The terms of the executed CONSENT AGREEMENT, attached hereto, are accepted by the undersigned and incorporated herein as if fully set forth.

Based on the representations of the parties in the attached CONSENT AGREEMENT, the civil penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007, and EPA's December 6, 2013 Memorandum from Cynthia Giles, in keeping with 40 C.F.R. Part 19 (Adjustment of Civil Monetary Penalties for Inflation), and the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). **NOW, THEREFORE, PURSUANT TO** Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **FIFTY-SIX THOUSAND ONE HUNDRED AND FOURTEEN DOLLARS (\$56,114)**, plus any applicable interest, as specified in the CONSENT AGREEMENT, and comply with the terms and conditions of the CONSENT AGREEMENT.

The effective date of this FINAL ORDER and attached CONSENT AGREEMENT is the date on which the FINAL ORDER, signed by the Regional Administrator of EPA - Region III or the Regional Judicial Officer of EPA - Region III, is filed with the Regional Hearing Clerk of EPA - Region III.

Dec. 18, 2018  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer  
EPA - Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

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**CERTIFICATE OF SERVICE**

I certify that, on DEC 18 2018 the original and one (1) copy of the **Consent Agreement and Final Order** in Docket No. TSCA-03-2019-0041 were filed with the U.S. EPA Region III Regional Hearing Clerk. I further certify that, on the date set forth below, I served a true and correct copy of the same upon each of the following persons, in the manner specified below, at the following addresses:

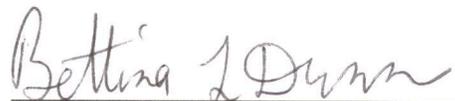
Copy served via **Overnight Mail** to:

Mark A. Kepple  
Bailey & Wyant, PLLC  
1219 Chapline Street  
Wheeling, West Virginia 26003

Copy served via **Hand Delivery or Inter-Office Mail** to:

James M. Baker  
Senior Assistant Regional Counsel, Air Branch (3RC10)  
Office of Regional Counsel  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

Date: DEC 18 2018



Regional Hearing Clerk  
U.S. EPA - Region III

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