

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

2015 SEP -9 PM 2: 29

11201 RENNER BOULEVARD

LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of

Jill E. Nagel
d/b/a North-O Properties

Respondent

Docket No. TSCA-07-2015-0004

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Jill E. Nagel, d/b/a North-O Properties (Respondent) have agreed to a settlement of this action, 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 Jill E. Nagel, d/b/a North-O Properties, an individual located in Papillion, Nebraska.

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 “lessor” as defined by 40 C.F.R. § 745.103, for the lease of the following properties in Omaha Nebraska:

5335 North 26th Street
2415 Camden Avenue
2432 Emmet
4224 Patrick Avenue
2909 Parker
4106 Binney
2615 Parker
3167 Sprague
1464 Emmet

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 9 above are herein incorporated.
12. Respondent entered into a contract to lease the target housing unit located at 4224 *Patrick Avenue, Omaha Nebraska* on or about *January 3, 2012*.
13. Respondent failed to provide the lessee(s) of 4224 *Patrick Avenue, Omaha Nebraska* with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee(s) were obligated under contract to lease the target housing unit.
14. Respondent's failure to perform the acts indicated in the paragraph above are violations of 40 C.F.R. §§ 745.107, and 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.

Counts 2 through 10

15. The facts stated in Paragraphs 6 through 9 above are herein incorporated.
16. Respondent entered into contracts to lease the target housing units as indicated:

Target Housing at:	Date of Lease on or about:
5335 North 26th Street	11/23/2012
2415 Camden Avenue	03/17/2014
2432 Emmet	02/19/2014
4224 Patrick Avenue	01/03/2012
2909 Parker	07/12/2013
4106 Binney	04/23/2013
2615 Parker	06/08/2012
3167 Sprague	11/20/2013
1464 Emmet	06/01/2012

17. Respondent failed to include with or within the lease the Lead Warning Statement language required pursuant to 40 C.F.R. § 745.113(b)(1).

18. Respondent's failure to perform the acts indicated in the previous paragraph are violations of 40 C.F.R. §§ 745.107, and 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.

Counts 11 through 19

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

20. Respondent entered into contracts to lease the target housing units as indicated:

Target Housing at:	Date of Lease on or about:
5335 North 26th Street .	11/23/2012
2415 Camden Avenue	03/17/2014
2432 Emmet	02/19/2014
4224 Patrick Avenue	01/03/2012
2909 Parker	07/12/2013
4106 Binney	04/23/2013
2615 Parker	06/08/2012
3167 Sprague	11/20/2013
1464 Emmet	06/01/2012

21. Respondent failed, at each address listed in the above Paragraph, to provide within the lease contract or as an attachment thereto, a statement disclosing the presence of a 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 and/or lead based paint hazards, pursuant to 40 C.F.R. § 745.113(b)(2).

22. Respondent's failures to perform the acts indicated are violations of 40 C.F.R. §§ 745.107, and 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.

Counts 20 through 28

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

24. Respondent entered into contracts to lease the target housing units as indicated:

Target Housing at:	Date of Lease on or about:
5335 North 26th Street	11/23/2012
2415 Camden Avenue	03/17/2014
2432 Emmet	02/19/2014
4224 Patrick Avenue	01/03/2012
2909 Parker	07/12/2013
4106 Binney	04/23/2013
2615 Parker	06/08/2012
3167 Sprague	11/20/2013
1464 Emmet	06/01/2012

25. Respondent failed, at each address listed in the above Paragraph, to list within the lease contract or as an attachment thereto any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that may have been provided to the lessee or indicate that no such reports or records exist, pursuant to 40 C.F.R. § 745.113(b)(3).

26. Respondent's failures to perform the acts indicated are violations of 40 C.F.R. §§ 745.107, and 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.

Counts 29 and 30

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

28. Respondent failed to disclose to the lessee the presence of any known lead-based

paint and/or lead-based paint hazards in the target housing units leased at

2909 Parker, Omaha, Nebraska; and
1464 Emmet, Omaha, Nebraska,

pursuant to 40 C.F.R. § 107(a)(2).

29. Respondent's failures to perform the acts indicated are violations of 40 C.F.R. § 745.107, 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.

Counts 31 and 32

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

31. Respondent failed to provide the lessees with any records or reports available to lessor pertaining to lead-based paint or lead-based paint hazards in the target housing units being leased at 2909 Parker, Omaha, Nebraska and at 1464 Emmett, Omaha, Nebraska, pursuant to 40 C.F.R. § 745.107(a)(4).

32. Respondent's failures to perform the acts indicated are violations of 40 C.F.R. § 745.107, 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

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

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

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

36. 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.

37. 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.

38. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph that immediately follows.

39. 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.

40. 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.

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 / Respondents shall pay a civil penalty of One Thousand, Seven Hundred, Fifty Dollars (\$1,750.00) 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
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Cassandra Mance, CRO
WWPD, TOPE Branch
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

**RESPONDENT
JILL E. NAGEL**

Date: 8.26.15

By:

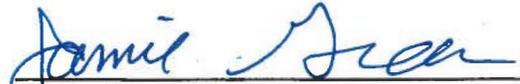
Jill E Nagel ^{DISA}
North-O Properties

Jill E. Nagel
d/b/a North-O Properties

Title

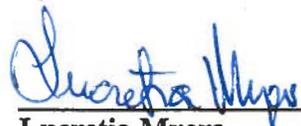
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9-2-2015



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

Date: 9/8/15



Lucretia Myers
Office of Regional Counsel

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

Date: 9-9-15

Karina Borromeo
KARINA X BORROMEIO
Regional Hearing Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Jill E. Nagel d/b/a North-O Properties, Respondent
Docket No. TSCA-07-2015-0004

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:

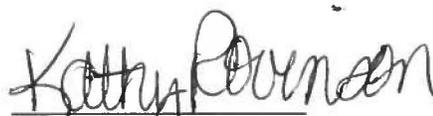
Copy by email to Attorney for Complainant:

myers.lucetia@epa.gov

Copy by First Class Mail to:

Jill Nagel
d/b/a North O Properties
1795 Kent Circle
Papillion, Nebraska 68046

9/9/15



Kathy Robinson
Hearing Clerk, Region 7