

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2015 JUL -7 PM 1:03

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

**In the Matter of** )  
 ) **Docket No. TSCA-07-2014-0022**  
 )  
Ryan G. Reinke )  
Lincoln, Nebraska )  
 )  
**Respondent** )

**CONSENT AGREEMENT AND FINAL ORDER**

This proceeding for the assessment of a civil penalty was initiated on or about July 24, 2014, pursuant to Section 409 of the Toxic Substance Control Act (TSCA), 15 U.S.C. § 2689, when the United State Environmental Protection Agency (Complainant or EPA) issued a Complaint and Notice of Opportunity For Hearing (Complaint) to Ryan Reinke (Respondent).

The Complaint charged Respondent with 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 (the Act), 42 U.S.C. § 4852d.

The Complaint proposed a civil penalty of Forty-eight Thousand Dollars (\$48,000) against Respondent for these violations. The Complainant and Respondent subsequently entered negotiations in an attempt to settle the allegations in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and resolves the allegations contained in the

Complaint.

## **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 (the Act), 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 Ryan G. Reinke (Reinke).

## **Section III**

### **Statutory and Regulatory Background**

5. Congress passed 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, for seventy-two units in Lincoln, Nebraska, including the properties located at 2417 Vine Street #1; 1212 D Street #11; and 1315 D Street #8 in Lincoln, Nebraska (the Properties or Property).
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 contracts to lease the target housing at 2417 Vine Street #1 in Lincoln, Nebraska, on or about September 21, 2011.

13. Respondent failed to conduct disclosure at the Property before the lessees were obligated under contract to lease the target housing unit in violation of 40 CFR 745.107(a). Respondent failed to conduct disclosure before lessee was obligated under contract to lease the target unit in violation in violation of 40 CFR 745.107(a) by failing to include, in each contract to lease target housing or as an attachment or within the contract, the following elements:

A) A Lead Warning Statement with the following language per 40 CFR 745.113(b)(1):

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention;

B) 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. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces per 40 CFR

745.113(b)(2);

C) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate per 40 CFR

745.113(b)(3).

14. Respondent's failure to perform the acts indicated in Paragraph 13 above is a violation of 40 C.F.R. § 745.107(a) 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 9 above are herein incorporated.

16. Respondent entered into contracts to lease the target housing at 1315 D Street #8 in Lincoln, Nebraska, on or about August 29, 2011.

17. Respondent failed to conduct disclosure at the Property before the lessees were obligated under contract to lease the target housing unit in violation of 40 CFR 745.107(a).

Respondent failed to conduct disclosure before lessee was obligated under contract to lease the target unit in violation in violation of 40 CFR 745.107(a) by failing to include, in each contract to lease target housing or as an attachment or within the contract, the following elements:

- A) A Lead Warning Statement with the following language per 40 CFR 745.113(b)(1):  
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention;
- B) 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. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces per 40 CFR 745.113(b)(2);
- C) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate per 40 CFR 745.113(b)(3).

18. Respondent's failure to perform the act indicated in Paragraph 17 above is a violation of 40 C.F.R. § 745.107(a) 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 3**

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

20. Respondent entered into contracts to lease the target housing at 1212 D Street #11 in Lincoln, Nebraska, on or about October 7, 2011.

21. Respondent failed to conduct disclosure at the Property before the lessees were obligated under contract to lease the target housing unit in violation of 40 CFR 745.107(a). Respondent failed to conduct disclosure before lessee was obligated under contract to lease the target unit in violation in violation of 40 CFR 745.107(a) by failing to include, in each contract to lease target housing or as an attachment or within the contract, the following elements:

- A) A Lead Warning Statement with the following language per 40 CFR 745.113(b)(1):  
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention;
- B) 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. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces per 40 CFR 745.113(b)(2);

C) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate per 40 CFR 745.113(b)(3).

22. Respondent's failure to perform the act indicated in Paragraph 21 above is a violation of 40 C.F.R. § 745.107(a) 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**

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

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

25. 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.



26. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing.

27. Respondent certifies by the signing of this CAFO that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

28. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty based on respondent's Ability to Pay Claim (ATP) determination. The ATP determination was based on the financial information Respondent submitted as his ATP Claim. Respondent's financial information was reviewed and it was determined that Respondent cannot pay any portion of the proposed penalty at this time.

## **Section VI**

### **Final Order**

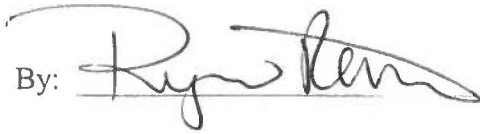
Pursuant to the provisions of TSCA, 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent, in settlement of the allegations set forth in the Complaint, shall not be assessed a civil penalty.

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

**RESPONDENT:  
RYAN G. REINKE**

Date: 6/23/15


By: 

Ryan Reinke  
Print Name


\_\_\_\_\_  
Title

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

Date: 7/3/2015

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

Date: 7/2/15

By:   
Jennifer Trotter  
Attorney  
Office of Regional Counsel

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

Date: 7-7-15

Karina Borromeo  
KARINA BORROMEO  
Regional Judicial Officer

IN THE MATTER OF Ryan G. Reinke, Respondent  
Docket No. TSCA-07-2014-0022

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:

trotter.jennifer@epa.gov

Copy by First Class Mail to:

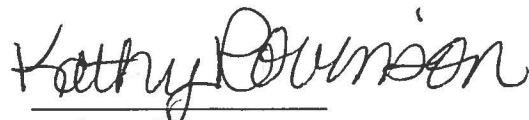
Ryan Reinke  
5200 N 20<sup>th</sup> St  
Lincoln, Nebraska 68521

Copy by email to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U. S. Environmental Protection Agency  
Mail Code 1900R  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

The Honorable Christine Coughlin  
Administrative Law Judge  
U. S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dated: 7/7/15



Kathy Robinson  
Hearing Clerk, Region 7