

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)	
)	
HAROLD AND ELLEN ROSNER)	Docket No. TSCA-07-2008-0044
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection (EPA)), Region 7 and Harold and Ellen Rosner (Respondents) 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

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 Respondents are Harold and Ellen Rosner.

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.

Alleged Violations

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count I

7. Respondents are, and at all times referred to herein were, a "person" within the meaning of TSCA.

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

9. Respondents are the "lessor," as that term is defined by 40 C.F.R. § 745.103, of a residential housing unit located at ("the Property").

10. Information collected during an EPA review of Respondents' records on June 5, 2008, shows that Respondents entered into a contract to lease the Property at 830 Mullanphy Road, Florissant, Missouri, on November 8, 2007

11. Information collected shows that Respondents failed to provide the lessee of the Property owned by Respondents 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 Respondents.

12. Respondent's failure to perform the acts indicated in Paragraph 11 above are violations of 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, Respondents admit the jurisdictional allegations set forth above.

14. Respondents admit the factual allegations set forth above.

15. Respondents waive their 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. Respondents 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. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

18. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a mitigated civil penalty in the amount of Seven Thousand Seven Hundred Dollars (\$7,700.00) 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. Respondents understand 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. Respondents shall pay a mitigated civil penalty of Seven Thousand Seven Hundred Dollars (\$7,700.00) 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

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

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

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

RESPONDENTS
HAROLD AND ELLEN ROSNER

Date: 10/16/08

By: Harold R Rosner

HAROLD R ROSNER LESSOR

Print Name

Title

Date: 10/16/08

By: Ellen M Rosner
~~ELLEN M. ROSNER~~

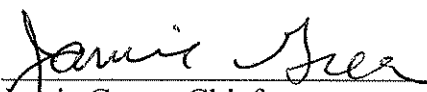
ELLEN M. ROSNER LESSOR

Print Name

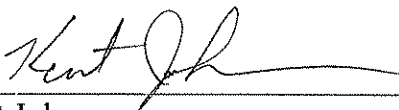
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/22/08

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

Date: 10/20/08

By: 
Kent Johnson
Office of Regional Counsel

In the Matter of Harold and Ellen Rosner
Docket No. TSCA-07-2008-0044

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

Date:

October 24, 2008

By:



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

IN THE MATTER OF Harold and Ellen Rosner, Respondents
Docket No. TSCA-07-2008-0044

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:

Kent Johnson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Harold R. And Ellen M. Rosner
3851 Hope Haven Drive
Florissant, Missouri 63034

October 27, 2008
Dated


Kathy Robinson
Hearing Clerk, Region 7