

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66101
BEFORE THE ADMINISTRATOR

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
2013 SEP 11 10:08:13

In the Matter of

Ray and Kimberly Crutcher

Respondent

)
)
)
)
)
)

Docket No. TSCA-07-2013-0016

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Ray and Kimberly Crutcher (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).

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 Respondents have 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 Respondents are Ray and Kimberly Crutcher.

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. Respondents are, and at all times referred to herein were, “persons” within the meaning of TSCA.

7. Respondents are the “lessors” as defined by 40 C.F.R. § 745.103, for the lease of 1222 Bank Street, Keokuk, Iowa (the Property).

8. The Property was constructed before 1978.

9. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

Violations

10. The Complainant hereby states and alleges that Respondents have 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. Respondents entered into a contract to lease the target housing unit located at 1222 Bank Street, Keokuk, Iowa on or about February 22, 2012.

13. Respondents failed to provide the lessee of 1222 Bank Street, Keokuk, Iowa with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before the lessee was obligated under contract to lease the target housing unit.

14. Respondents' 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

15. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

16. Respondents neither admit nor deny the factual allegations set forth above.

17. Respondents waive their right to contest any issue of fact or law set forth above and their right to appeal the Final Order accompanying this Consent Agreement.

18. 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.

19. The undersigned representative of Respondents certify that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondents to it.

20. Respondents certify by the signing of this Consent Agreement and Final Order that they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

21. Respondents agree that, in settlement of the claims alleged in this CAFO, Respondents shall pay a mitigated penalty of Eleven Thousand Two Hundred Dollars (\$11,200) as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of TSCA alleged in this document.

Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law and/or regulation administered by the EPA.

22. The effect of settlement described in Paragraph 21 above is conditioned upon the accuracy of Respondents' representations to EPA, as memorialized in Paragraph 20 of this Consent Agreement and Final Order.

23. 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.

24. Respondents understand that their 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. Respondents shall pay a civil penalty of Eleven Thousand Two Hundred (\$11,200) within thirty (30) days of the effective date of this Final Order. Such payment shall identify

Respondents 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


Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondents 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.

RESPONDENTS
RAY AND KIMBERLY CRUTCHER

Date: 8/30/13

By: 
Ray Crutcher Owner
Print Name Title

Date: 8/30/13

By: 
Kimberly Crutcher Owner
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/9/2013



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


Date: 9/9/13



Kelley Catlin
Office of Regional Counsel

IT IS SO ORDERED.

Date: 9-11-13



KARINA BORROMEO
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Ray and Kimberly Crutcher, Respondent
Docket No. TSCA-07-2013-0016

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:

catlin.kelley@epa.gov

Copy by email to Respondent:

kaaage@yahoo.com

Dated: 9/11/13

A handwritten signature in blue ink that reads "Kathy Robinson". The signature is written in a cursive style and is positioned above a horizontal line.

Kathy Robinson
Hearing Clerk, Region 7