

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

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
David Panek) **Docket No. TSCA-07-2021-0015**
)
Respondent)
_____)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7 and David Panek (Respondent) 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 and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated 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 the EPA has reason to believe that Respondent has violated Section 409 of the 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.

Parties

3. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.
4. Respondent is David Panek, an individual.

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 the TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required the 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.

6. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. § 745.107 (disclosure requirements for sellers and lessors), 40 C.F.R. § 745.110 (opportunity to conduct an evaluation), 40 C.F.R. § 745.113 (certification and acknowledgment of disclosure), or 40 C.F.R. § 745.115 (agent responsibilities), is a violation of 42 U.S.C. § 4852d(b)(5) and of Section 409 of TSCA, 15 U.S.C. § 2689. 42 U.S.C. § 4852d(b)(5) provides that it shall be a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689 for any person to fail or refuse to comply with any rule issued under 42 U.S.C. § 4852d. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart F.

7. Section 16(a) of TSCA, 15 U.S.C. § 2615(a) authorizes the EPA Administrator to assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which limited penalties for violations of 42 U.S.C. § 4852d(b)(5), assessed under Section 16 of TSCA, 15 U.S.C. § 2615, to not more than \$10,000 per violation. Each day that such a violation continues constitutes a separate violation of Section 409. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note, Pub. L. 114-74, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$18,364 for violations that occurred after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

General Factual Allegations

8. On or about April 4, 2019, EPA sent Respondent an Information Request Letter to evaluate Respondent's compliance with TSCA and the 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. Respondent responded to the Information Request Letter on April 24, 2019.

9. Respondent is, and at all times referred to herein was, a “person” within the meaning of the TSCA.

10. Respondent is the “lessor,” as defined by 40 C.F.R. § 745.103, for the lease of 9508 Raytown Road, Kansas City, Missouri 64134 (the Property).

11. At all times relevant to this Consent Agreement and Final Order, Respondent leased the Property to a lessee.

12. Respondent’s response to the Information Request letter demonstrated that Respondent entered into a contract to lease the Property on or about January 24, 2019.

13. The Property was constructed before 1978.

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

15. At all times relevant to this Consent Agreement and Final Order, the Property was occupied or intended to be occupied by one or more children under the age of six years.

16. As a result of Respondent’s response to the Information Request Letter and additional information obtained by the agency, Complainant has determined that violations 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*, and therefore Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent’s actions related to the Property.

Allegations of Violation

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

Count 1

18. The facts stated in Paragraphs 8 through 16 above are herein incorporated.

19. Pursuant to 40 C.F.R. § 745.107(a)(1), the seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not an otherwise exempt transaction.

20. Respondent’s response to the Information Request letter demonstrated that Respondent failed to provide the lessee of the Property with an EPA-approved lead hazard information pamphlet before the lessee was obligated under contract to lease the target housing unit and that this was not an otherwise exempt transaction.

21. Respondent's failure to provide the EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107, and pursuant to 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of the TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of the TSCA, 15 U.S.C. § 2615.

Consent Agreement

22. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

23. Respondent consents to the issuance of this Consent Agreement and Final Order.

24. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

25. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *drauzi@att.net*.

Penalty Payment

26. EPA has considered the appropriateness of the penalty pursuant to Section 16(a)(2)(B) of the TSCA, 15 U.S.C. § 2615(a)(2)(B) and has determined that the appropriate penalty for the violation is Seventeen Thousand Three-Hundred Ninety-Five Dollars (\$17,395). However, pursuant to the statutory requirement that the EPA consider a respondent's ability to pay, Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of

Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein for Zero Dollars (\$0).

Effect of Settlement and Reservation of Rights

27. This Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

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

29. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

30. This Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

31. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

32. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

General Provisions

33. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

34. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order 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.

35. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all

contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
DAVID PANEK

Date: 2-2-2021 By: 

David Panek
Print Name

Respondent
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Date: _____

Britt Bieri
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that 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 via Email to Complainant:

Britt Bieri, *bieri.britt@epa.gov*

Copy via Email to Respondent's attorney:

David Rauzi, *drauzi@att.net*

Dated this _____ day of _____, _____.

Signed