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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. TSCA-10-2012-0116
)	
American Property Management)	CONSENT AGREEMENT AND
2154 N.E. Broadway)	FINAL ORDER
Suite 200)	
Portland, Oregon 97212)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2686.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to TSCA Section 16, 15 U.S.C. § 2691, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and American Property Management (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Air, Waste and Toxics, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 16 of TSCA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Title X of the Residential Lead-based Paint Hazard Reduction Act (which became part of the Toxic Substances Control Act (TSCA)) and EPA’s regulations implementing this law, the Real Estate Notification and Disclosure Rule (Disclosure Rule), require a lessor, when leasing target housing (i.e., housing built before 1978), to disclose information regarding lead paint and lead-based paint hazards to lessees.

3.2 Under 40 C.F.R. § 745.113(b)(4), a lessor must obtain, within or as an attachment to each lease contract, a statement from each lessee affirming receipt of the lead-based paint disclosure statement required by 40 C.F.R. § 745.113(b)(2), a list of any records and reports relevant to lead-based paint hazards required by 40 C.F.R. § 745.113(b)(3), and the EPA-approved pamphlet entitled “Protect Your Family from Lead in Your Home” required by 15 U.S.C. § 2696.

3.3 Respondent is the lessor of properties in Portland, Oregon located at: 3117 SE Ankeny Street (#2, 7, 8, 9), 2923 SE Hawthorne Boulevard, 2314 NE 11th Avenue, 111 NE 18th Avenue (#101, 103, 105, 107, 117), 723 NE 73rd Avenue, 2905 SE Washington Street, 1311 NE Davis Street (#4, 5, 7, 9), 2112 SE Pine Street (#1, 3, 4), 2032 SE Pine Street (#2, 3), 2022 SE Pine Street (#2), 2006 SE Pine Street (#2), and 2102 SE Pine Street (#2, 3).

3.4 From 2007-2010, Respondent's properties, listed above in Paragraph 3.3, contained at least 33 units of target housing as defined in 40 C.F.R. § 745.107.

3.5 Respondent leased the units listed above in Paragraph 3.3 at least 35 times.

3.6 For each of the 35 leases, Respondent failed to obtain, within or as an attachment to each lease contract, a statement from each lessee affirming receipt of lead-based paint disclosure statement, a list of any records and reports relevant to lead-based paint hazards, and an EPA-approved pamphlet entitled "Protect Your Family from Lead in Your Home," in violation of 40 C.F.R. § 745.113(b)(4).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part I of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. In light of the nature of the violation, Respondent's actions to correct the violations after having been notified by Complainant, and Respondent's willingness to settle this matter without litigation, and in accordance with the *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is ten thousand dollars (\$10,000).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order contained in Section V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Barbara Ross, TSCA Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop AWT-128
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. Each party shall bear its own costs in bringing or defending this action.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the penalty are not subject to review.

4.9. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order contained herein.

4.10. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Section III and is currently in compliance with all applicable TSCA requirements at each of the properties under its control.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

5/8/12

FOR RESPONDENT:



KEITH VERNON, President
American Property Management

DATED:

5/18/12

FOR COMPLAINANT:



RICHARD ALBRIGHT, Director
Office of Air, Waste and Toxics
EPA Region 10


V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 21st day of May, 2012.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

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Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of American Property Management, Docket No.: TSCA-10-2012-0116**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Jillian Bunyan, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Keith Vernon, President
American Property Management
2154 N.E. Broadway, Suite 200
Portland, Oregon 97212

DATED this 21st day of May, 2012



Candace H. Smith
Regional Hearing Clerk
EPA Region 10