



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
December 2, 2010

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7662 0970

Mr. Edward F. Vannoller
2501 Rudgato Drive, NW
Grand Rapids, Michigan 49544

Edward F. Vannoller TSCA-05-2011-0002

Dear Mr. Vannoller:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on December 2, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$800.00 is to be paid in the manner described in paragraphs 2 thru 4, on pages 5 and 6. Please be certain that the number **BD 2751147X003** and the docket number are written on both the transmittal letter and on the check. Payment is due by January 2, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Scott Cooper".

Scott Cooper
Pesticides and Toxics Compliance Section

Enclosures

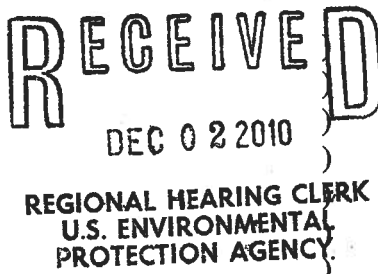
cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Gary E. Steinbauer, Counsel for Complainant/C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Edward F. Vannoller
Grand Rapids, Michigan

Respondent.



Docket No. TSCA-05-2011-0002

Proceeding to Assess a Civil
Penalty Under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2615(a)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (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* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Edward F. Vannoller, a sole proprietor doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and admits the factual allegations in this CAFO.

8. Respondent waives his right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and his right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, EPA promulgated regulations at 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 (Disclosure Rule), pursuant to 42 U.S.C. § 4852d.

11. 40 C.F.R. § 745.103 defines “target housing” as “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.”

12. 40 C.F.R. § 745.103 defines “lessor” as “any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.”

13. 40 C.F.R. § 745.103 defines “lessee” as “any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships,

corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.”

14. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet*; and the signatures and dates of signature of the lessor, agent, and lessee certifying the accuracy of their statements.

15. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

16. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. On or about September 3, 2007, Respondent owned residential property in Parchment, Michigan at 5213 Beverly Street (Respondent’s property).

18. Respondent’s property is “target housing” as defined in 40 C.F.R. § 745.103.

19. On or about September 3, 2007, Respondent entered into a Residential-Lease

Agreement (Contract) with an individual for the lease of Respondent's property.

20. The Contract referred to in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 17, above, for lease.

22. The individual who signed the Contract to pay rent in exchange for occupancy of the target housing referred to in paragraph 17, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

23. Respondent failed to include a lead warning statement, either within the Contract or as an attachment to the Contract, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. Respondent failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the Contract or as an attachment to the Contract, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the Contract or as an attachment to the Contract, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. Respondent failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet* required under 15 U.S.C. § 2696, either within the Contract or as an attachment to the

Contract, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. Respondent failed to include the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the Contract or as an attachment to the Contract, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

1. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$800. In consideration of Respondent's inability to pay a penalty, EPA agrees to mitigate the proposed penalty of \$24,990 to \$800. In determining the penalty amount, Complainant also considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, the effect on ability to continue to do business, any history of such prior violations, and the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

2. Within 30 days after the effective date of this CAFO, Respondent must pay a \$800 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

a. For checks sent by regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

b. For checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

3. The check must state In the Matter of Edward F. Vannoler, the docket number of this CAFO, and the billing document number.

4. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Scott Cooper (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Gary E. Steinbauer (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

5. This civil penalty is not deductible for federal tax purposes.

6. If Respondent does not pay the civil penalty timely, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

7. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount

overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

8. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

9. This CAFO does not 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.

10. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

11. Respondent certifies that he is complying with the Lead Act and the Disclosure Rule.

12. The terms of this CAFO bind Respondent, and his successors and assigns.

13. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

14. Each party agrees to bear its own costs and attorney's fees in this action.

15. This CAFO constitutes the entire agreement between the parties.

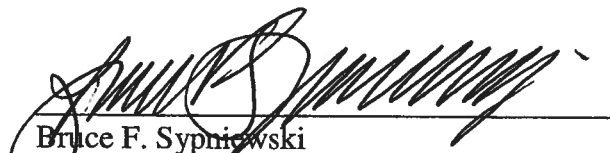
Edward F. Vannoller, Respondent

11 / 4 / 10
Date

Edward F. Vannoller
Edward F. Vannoller

United States Environmental Protection Agency, Complainant

11 / 30 / 10
Date


Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

**In the Matter of:
Edward F. Vannoller
Docket No. TSCA-05-2011-0002**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-1-10

Date:



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
DEC 02 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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NOV 18 2010

OFFICE OF REGIONAL
COUNSEL

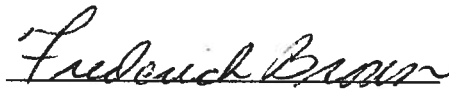
CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Edward F. Vannoller, was filed on December 2, 2010, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7662 0970 to:

Edward F. Vannoller
2501 Rudgato Drive, NW
Grand Rapids, Michigan 49544

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Gary E. Steinbauer, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2011-0002

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DEC 02 2010
REGIONAL HEARING CLERK
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PROTECTION AGENCY

