



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
August 5, 2014

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL 7009 1680 0000 7649 6827
RETURN RECEIPT REQUESTED

Mr. John C. White
4059 White Street
Cincinnati, Ohio 45255

Consent Agreement and Final Order in the Matter of
John C. White, Docket No. TSCA-05-2014-0017

Dear Mr. White:

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 August 5, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$500 is to be paid in the manner described in paragraphs 31 and 32. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by September 4, 2014 (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 "Meghan Dunn".

Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

JOHN C. WHITE,
CINCINNATI, OHIO,

Respondent.



) Docket No.TSCA-05-2014-0017
)

) 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

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. Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is John C. White, a natural person residing at 4059 White Street, Cincinnati, Ohio.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
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 A HEARING

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies 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 its right to appeal this CAFO.

STATUTORY AND REGULATORY BACKGROUND

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 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. Federal regulations, at 40 C.F.R. § 745.103, define 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. Federal regulations, at 40 C.F.R. § 745.103, define “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. Federal regulations, at 40 C.F.R. § 745.113(b), require 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 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 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 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 may assess a civil penalty of up to \$16,000 for each violation of section 409 that occurred after 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. Between October 18, 2001, and the present, Respondent owned a residential apartment building at 912 Elberon Avenue in Cincinnati, Ohio (Respondent's property).

18. Respondent's property was constructed prior to 1978.

19. Respondent's property is "target housing" as defined in 40 C.F.R. § 745.103.

20. On August 1, 2002, Respondent entered into a lease agreement, a contract, with individuals for the lease of an apartment unit within Respondent's property. Through at least September 2010, the lease agreement was annually renewed and accompanied by an increase in the amount of rent.

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

22. 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.

23. The individual who entered the lease to pay rent in exchange for occupancy of the target housing described in paragraph 17, above, is a "lessee" as defined in 40 C.F.R. § 745.103.

24. Each time Respondent altered the terms of the lease agreement described in paragraph 20 at renewal, the Disclosure Rule required Respondent to make disclosures under the rule.

25. In the initial lease and in each of the annual lease renewals described in paragraph 20, Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent's property described in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. In the initial lease and in each of the annual lease renewals described in paragraph 20, Respondent failed to include a statement disclosing either the presence of any known lead-based paint 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 for the lease of Respondent's property described in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. In the initial lease and in each of the annual lease renewals described in paragraph 20, Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint 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 for the lease of Respondent's property described in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. In the initial lease and in each of the annual lease renewals described in paragraph 20, 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 for the lease of Respondent's property, described in paragraph 20, above, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

29. In the initial lease and in each of the annual lease renewals described in paragraph 20, 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 for the lease of Respondent's properties described in paragraph 20, above, 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

30. 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 \$500. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of

such prior violations and degree of culpability. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$500 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must contain the caption *In the matter of John C. White* and the docket number of this CAFO.

32. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

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

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

34. If Respondent does not pay timely the civil penalty, 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.

35. 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

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

37. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

38. 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.

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

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

- 41. 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.
- 42. Each party agrees to bear its own costs and attorneys fees in this action.
- 43. This CAFO constitutes the entire agreement between the parties.

John C. White, Respondent

6-24-14
Date

John C. White
John C. White

United States Environmental Protection Agency, Complainant

7/22/14
Date

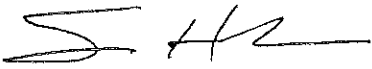
Michael D. Harris For M.G.
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
John C. White,
Cincinnati, Ohio,
Docket No. TSCA-05-2014-0017

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.

7-29-2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

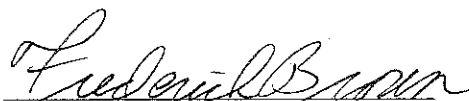
CERTIFICATE OF SERVICE

This is to certify that a copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving John C. White, was filed on August 5, 2014, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd. Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7649 6827 to:

Mr. John C. White
4059 White Street
Cincinnati, Ohio 45255

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Robert Guenther, 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-05-2014-0017

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)