



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

JUN 13 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 8001

Amy and Joseph Ray
Justus Properties, LLC
19110 Inman Court
Lakeville, Minnesota 55044

In the Matter of Justus Properties, LLC
Consent Agreement and Final Order, Docket No. TSCA-05-2012-0016

Dear Ms. Amy and Mr. Joseph Ray:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 13, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,200 is to be paid in the manner described in paragraphs 34 and 35. Please be certain that the number **BD 2751247X017** and the docket numbers are written on both the transmittal letter and on the check. Payment is due by July 13, 2012, (within 45 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely

Davis
for Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Justus Properties, LLC)
Lakeville, Minnesota,)

Respondent.)
_____)

Docket No. TSCA-05-2012-0016

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

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REGIONAL HEARING CLERK
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PROTECTION AGENCY

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. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Justus Properties, LLC, a partnership with a place of business located at 19110 Inman Court, Lakeville, Minnesota.
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 neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its 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. 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. § 745.107(a) requires the lessor to provide the lessee with the EPA-

approved lead hazard information pamphlet.

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract:

- a. A lead warning statement, (b)(1);
- b. 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, (b)(2);
- c. 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, (b)(3);
- d. 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, (b)(4); and
- e. The signatures and dates of signature of the lessor, and lessee certifying the accuracy of their statements, (b)(6).

16. 40 C.F.R. § 745.113(c) requires the lessor to retain a copy of the completed disclosure record described in paragraph 15, above, for no less than three years from the commencement date of the lease.

17. 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).

18. 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 and 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

19. Between April 5, 2008 and July 1, 2009, Respondent owned residential apartment buildings in Minneapolis, Minnesota at 3021/3023 Chicago Avenue South (Respondent's properties).

20. Respondent's properties are "target housing" as defined in 40 C.F.R. § 745.103.

21. For each property and on each corresponding date listed below, Respondent entered into a contractual agreement with an individual to lease Respondent's property:

Address	Apartment No.	Date of Lease
3021/3023 Chicago Ave S	2	July 2, 2008
3021 Chicago Ave S	1	April 5, 2008

22. Both of the contracts referred to in paragraph 21, above, covered a term of occupancy greater than 100 days.

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

24. Each individual who entered into a contractual agreement referred to in paragraph 21, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

25. For the contractual agreement dated July 2, 2008 in paragraph 21, above, Complainant alleges Respondent failed to include a lead based paint hazard pamphlet with the contract, in violation of 40 C.F.R. § 745.107 (a), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. For the contractual agreement dated July 2, 2008 in paragraph 21, above,

Complainant alleges 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).

27. For the contractual agreement dated July 2, 2008 in paragraph 21, above, Complainant alleges 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).

28. For the contractual agreement dated July 2, 2008 in paragraph 21, above, Complainant alleges 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).

29. For the contractual agreement dated July 2, 2008 in paragraph 21, above, Complainant alleges 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).

30. For the contractual agreement dated July 2, 2008 in paragraph 21, above, Complainant alleges 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).

31. For the contractual agreement dated April 5, 2008 in paragraph 21, above, Complainant alleges Respondent failed to retain a copy of the completed attachments or lease contracts containing the information required under 40 C.F.R. § 745.113(b) for no less than three years from the commencement of the leasing period for the contract, in violation of 40 C.F.R. § 745.113(c)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

32. 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 \$1,200.00. 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, the degree of culpability. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

33. Respondent certifies that all information contained in each Internal Revenue Service (IRS) Form 1065 (U.S. Return of Partnership Income) that it submitted to the EPA contains the same information as submitted to the IRS. Respondent further certifies that it has reviewed the information contained in each Form 1065 submitted to the EPA and the IRS, and that, to the best of its knowledge, all information contained in each IRS Form 1065 is true, accurate, and complete.

34. Within 45 days after the effective date of this CAFO, Respondent must pay a \$1,200.00 civil penalty for the TSCA violations by sending a cashier's or certified check,

payable to "Treasurer, United States of America," by regular U.S. Postal Service mail to:

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

The check must state the case title ("In the matter of Justus Properties, LLC"), the docket number of this CAFO and the billing document number.

35. Respondent must send a transmittal letter accompanying the check, stating the Respondent's name, the case title, Respondent's complete address, the case docket number, and the billing document number.

36. Respondent must send a copy of the check and the transmittal letter to:

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

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

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

38. 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.

39. 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

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

41. 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.

42. 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.

43. Respondent certifies that it is complying with the Lead Act and the Disclosure Rule.

44. The terms of this CAFO bind Respondent, and its successors and assigns.

45. 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.

46. Each party agrees to bear its own costs and attorneys fees in this action.

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

Justus Properties, LLC, Respondent

5.10.12
Date

Joseph M. Ray
Joseph M. Ray
Governor
Justus Properties, LLC

5/10/12
Date

Amy D. Ray
Amy D. Ray
Governor
Justus Properties, LLC

United States Environmental Protection Agency, Complainant

6/6/12
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Justus Properties, LLC
Docket No. TSCA-05-2012-0016

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.

June 11, 2012

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY**

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Justus Properties, LLC, was filed on June 13, 2012, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7009 1680 0000 7667 8001, a copy of the original to the Respondents:

Amy and Joseph Ray
Justus Properties, LLC
19110 Inman Court
Lakeville, Minnesota 55044

and forwarded intra-Agency copies to:

John Breslin, Regional Judicial Officer, ORC/C-14J
Eaton R. Weiler, Counsel for Complainant ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



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

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