

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

2014 FEB 11 PM 1:30

11201 RENNER BOULEVARD  
LENEXA, KANSAS 66101  
BEFORE THE ADMINISTRATOR

In the Matter of )

) Docket No. TSCA-07-2014-0012

Jon D. Canaday )

d/b/a St. Joseph Property Management )

Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Jon D. Canaday d/b/a St. Joseph Property Management (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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted 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 (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 409 of 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.

## **Section II**

### **Parties**

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Jon D. Canaday d/b/a St. Joseph Property Management, a lessor of residential property in St. Joseph, Missouri.

## **Section III**

### **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 TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required 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. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

#### **Section IV**

##### **General Factual Allegations**

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

7. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, for the lease of 716 North 10<sup>th</sup> Street, Lower Level, St. Joseph, Missouri (the Property).

8. The Property was constructed before 1978.

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

##### **Violations**

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

##### **Count 1**

11. The facts stated in Paragraphs 6 through 9 above are herein incorporated.

12. Respondent entered into a contract to lease the target housing unit located at 716 North 10<sup>th</sup> Street, Lower Level, St. Joseph, Missouri, on or about February 10, 2012.

13. Respondent failed to provide the lessee of the Property with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under contract to lease the target housing unit.

14. Respondent's failure to perform the acts indicated in Paragraph 13 above are violations of 40 C.F.R. §§ 745.107, 745.113, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

## Section V

### Consent Agreement

15. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

16. Respondent neither admits nor denies the factual allegations set forth above.

17. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

19. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

20. Respondent certifies by the signing of this CAFO that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

21. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Nine Thousand Five Hundred Sixteen Dollars and Sixty-Two Cents (\$9,516.62) plus interest of Eighty-Three Dollars and Thirty-Eight Cents (\$83.38) for a total mitigated penalty of Nine Thousand Six Hundred Dollars (\$9,600.00) as set

forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of TSCA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law and/or regulation administered by the EPA.

22. The effect of settlement described in Paragraph 21 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 20 of this CAFO.

23. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

24. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

## **Section VI**

### **Final Order**

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty Nine Thousand Five Hundred Sixteen Dollars and Sixty-Two Cents (\$9,516.62) plus interest of Eighty-Three Dollars and Thirty-Eight Cents (\$83.38) over a period of two years for a total mitigated penalty of Nine Thousand Six Hundred Dollars (\$9,600.00). The total payment shall be paid in quarterly payments of One Thousand Two Hundred Dollars (\$1,200.00). The first payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order. Each subsequent payment shall be paid ninety (90) days after the previous payment. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

2. A copy of each check or other information confirming each payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.
4. 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.

IN THE MATTER OF  
JON D. CANADAY d/b/a  
ST. JOSEPH PROPERTY MANAGEMENT  
Docket No. TSCA-07-2014-0012

**RESPONDENT**

JON D. CANADAY d/b/a ST. JOSEPH PROPERTY MANAGEMENT

Date: 1/31/14

By: Jon D. Canaday


Jon D Canady  
Print Name

Owner  
Title

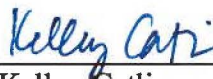


**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 2/6/14

  
\_\_\_\_\_  
Jamie Green  
Chief  
Toxics and Pesticides Branch  
Water, Wetlands and Pesticides Division

Date: 2/6/14

  
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Kelley Catlin  
Assistant Regional Counsel  
Office of Regional Counsel

IN THE MATTER OF  
JON D. CANADAY d/b/a  
ST. JOSEPH PROPERTY MANAGEMENT  
Docket No. TSCA-07-2014-0012

**IT IS SO ORDERED.**

Date: 2-11-14

*Karina Borromeo*

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KARINA BORROMEO  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Jon D. Canaday d/b/a St. Joseph Property Management, Respondent  
Docket No. TSCA-07-2014-0012

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by email to Respondent:

nrobb@mortonreedlaw.com

Dated: 2/11/14

  
\_\_\_\_\_  
Kathy Robinson  
Hearing Clerk, Region 7