

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

**CAPITAL RENTALS
Lincoln, NE**

Respondent

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Docket No. TSCA-07-2007-0036

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Capital Rentals Enterprises, Inc. (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 2.13(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 Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

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 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.

Parties

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

4. The Respondent is Capital Rentals (Capital Rentals Enterprises, Inc.).

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.

Alleged Violations

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

Count 1

7. Respondent is, and at all times referred to herein was, a "person" within the meaning of TSCA.

8. Respondent is the "lessor", as that term is defined by 40 C.F.R. § 745.103, of 230 South 27th Street in Lincoln, Nebraska.

9. The property referenced above is "target housing" as that term is defined by 40 C.F.R. § 745.103.

10. Information collected shows that Respondent entered into a contract to lease 230 South 27th Street in Lincoln, Nebraska on or about November 2, 2006.

11. Information collected shows that Respondent failed to include, either in the lease itself or in an attachment thereto, the "Lead Warning Statement" contained in 40 C.F.R. § 745.113 (b)(1), as required by 40 C.F.R. § 745.113 (b)(1).

12. Respondent's failure to include, either in the lease itself or in an attachment thereto, the "Lead Warning Statement" contained in 40 C.F.R. § 745.113 (b)(1) is a violation of 40 C.F.R. § 745.113 (b)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation 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.

CONSENT AGREEMENT

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

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

15. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

17. Respondent certifies by the signing of this Consent Agreement and Final Order that, to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

18. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of \$5416.00 to be paid according to the payment schedule set forth in paragraph 1 of the Final Order below.

19. The effect of settlement described in Paragraph 18 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 17 above.

20. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 18 above and further 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, late payment handling charges, and accumulated interest. In such cases, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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 charged for each subsequent thirty (30) day period. Interest shall accrue thereon at the rate determined by the

Secretary of the Treasury (currently four percent (4%) per annum for the period January 1, 2007, through December 31, 2007) on the unpaid balance until such civil penalty and accrued interest are both paid in full. 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.

21. In settlement of this matter, Respondent has completed the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits: Respondent had a lead-based paint inspection performed, by a licensed inspector, at 230 South 27th Street in Lincoln, Nebraska to determine the presence of lead-based paint and or lead-based paint hazards.

22. The total expenditure for the SEP was \$917.86 and the SEP was completed on April 26, 2007. All work required to complete the SEP was performed in compliance with all Federal, State, and Local Laws and Regulations.

23. Respondent has submitted a SEP Completion Report to EPA. The SEP Completion Report contains the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks; and;
- (iii) The following certification signed by **Respondent**:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

24. Respondent certifies that it was not required to perform or develop the SEP by any federal, state or local law or regulation; nor was Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

25. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

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 mitigated civil penalty of \$5416.00, plus interest of \$118.52 over a period of twelve (12) months for a total payment of \$5534.52. The first payment of \$461.21 must be received at the address below on or before thirty (30) days after the effective date of the Final Order (the date by which payment must be received shall thereafter referred to as the "due date"). Each succeeding payment of \$461.21 will be due thirty (30) days after the previous payment.

2. Each payment shall identify the 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:

EPA-Region 7
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

3. A copy of the check shall simultaneously be sent to the following:

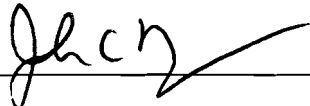
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

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

**RESPONDENT
CAPITAL RENTALS**

Date: 9/19/07

By: 
JOHN C. BUSSEY MANAGER
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/25/07


By: Jamie Green
Jamie Green, Branch Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 9-21-07

By: Jennifer Trotter
Jennifer Trotter, Attorney
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: September 25, 2007



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF Capital Rentals, Respondent
Docket No. TSCA-07-2007-0036

CERTIFICATE OF SERVICE

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

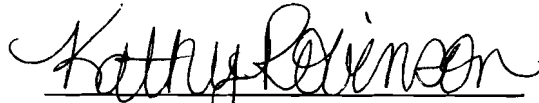
Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. John C. Bussey
Capital Rental Enterprises, Inc.
927 S 11th Street, #9
Lincoln, Nebraska 68508

Dated: 1/25/07


Kathy Robinson
Hearing Clerk, Region 7