

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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BEFORE THE ADMINISTRATOR

In the Matter of)
) **Docket No. TSCA-07-2012-0023**
)
Dale W. and Sara V. Wands Trust)
Rolla, Missouri)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Dale W. and Sara V. Wands Trust (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 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 the Dale W. and Sara V. Wands Trust, a residential housing lessor located in Rolla, 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 the following target housing units located in Rolla, Missouri: 102 W. 12th Street, 100 S. Olive Street, 105 W. 16th Street, and 205 E. 11th Street (the Properties).

8. The Properties were constructed before 1978.

9. The Properties are “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 102 W. 12th Street, Rolla, Missouri, on or about February 7, 2011.

13. Respondent failed to provide the lessees of 102 W. 12th Street with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees were 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 and 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.

Count 2

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

16. Respondent entered into a contract to lease the target housing unit located at 100 S. Olive Street, Rolla, Missouri, on or about April 19, 2011.

17. Respondent failed to provide the lessees of 100 S. Olive Street with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees were obligated under contract to lease the target housing unit.

18. Respondent's failure to perform the acts indicated in Paragraph 17 above are violations of 40 C.F.R. §§ 745.107 and 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.

Count 3

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

20. Respondent entered into a contract to lease the target housing unit located at 105 W. 16th Street, Rolla, Missouri, on or about January 7, 2012.

21. Respondent failed to provide the lessee of 105 W. 16th Street with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees were obligated under contract to lease the target housing unit.

22. Respondent's failure to perform the acts indicated in Paragraph 21 above are violations of 40 C.F.R. §§ 745.107 and 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.

Count 4

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

24. Respondent entered into a contract to lease the target housing unit located at 205 E. 11th Street, Rolla, Missouri, on or about March 3, 2011.

25. Respondent failed to provide the lessees of 205 E. 11th Street with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees were obligated under contract to lease the target housing unit.

26. Respondent's failure to perform the acts indicated in Paragraph 25 above are violations of 40 C.F.R. §§ 745.107 and 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

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

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

29. 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.

30. 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.

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

32. 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.

33. The effect of settlement described in Paragraph 34 below is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 31 above of this Consent Agreement and Final Order.

34. Respondent consents to paying the following mitigated penalty for the violations alleged in this Consent Agreement and Final Order Seven Hundred Ninety-Five Dollars (\$795.00). Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. § 2689 and 40 C.F.R. Subpart F alleged in this document.

35. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure

significant environmental and/or public health benefits: Abatement of lead-based paint at target housing by and through a certified lead abatement contractor at the cost of not less than Seven Thousand One Hundred Fifty-Seven Dollars (\$7,157.00) for the replacement of lead contaminated windows in accordance with the federal lead-based paint abatement regulations. The abatement work shall be performed at the following target housing unit: 103 East 12th Street, Rolla, Missouri. In accordance with Missouri state regulations, following the completion of the abatement work, Respondent must have lead clearance testing performed by a certified risk assessor. The abatement work and the lead clearance testing may not be performed by the same individual or entity.

36. No later than May 15, 2013, Respondent shall submit a SEP Work Plan to the EPA contact identified in Paragraph 40 below. The SEP Work Plan shall be subject to EPA review and approval as provided in Paragraph 41 below. The SEP Work Plan shall set forth in detail the scope of the SEP, including the name, address, and telephone number of the certified lead abatement contractor, a copy of the contractor's lead abatement certification, a copy of the bid which should include the following: current date, address of property where the SEP will be performed, number of windows being replaced, total cost of the project, notation that the SEP will be an abatement SEP and comply with all Federal, state and local laws, and information regarding the lead clearance testing.

37. Within seven (7) days of EPA's approval of the SEP Work Plan, Respondent shall provide EPA with a copy of the letter sent to Missouri Department of Health and Senior Services informing the state of Respondent's intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

38. The total expenditure for the SEP shall be not less than Seven Thousand One Hundred Fifty-Seven Dollars (\$7,157.00) and the SEP shall be completed no later than August 31, 2013. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

39. Respondent agrees that the abatement work on the SEP referenced in Paragraph 36 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities.

40. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- a. A detailed description of the SEP as implemented;
- b. Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- c. The final abatement report, as required by state law; and
- d. The following certification signed by Respondent or, if Respondent is a corporation, an officer of the corporation:

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.

The report shall be directed to the following:

As to EPA:

Cassandra Mance
WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

As to the state:

Chris Silva
Missouri Department of Health and Senior Services
P.O. Box 570
Jefferson City, Missouri 65102-0570.

41. SEP Work Plan and SEP Completion Report Approval: The SEP Work Plan and SEP Completion Report submitted pursuant to this CAFO shall be reviewed in accordance with the procedures outlined in this Paragraph. The EPA will review the SEP Work Plan and SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent, in addition to requiring further action. If the SEP Work Plan or SEP Completion Report is disapproved with comments, Respondent shall incorporate the EPA's comments and take any specified action and resubmit the SEP Work Plan or SEP Completion Report within thirty (30) days of receipt of the EPA's comments, unless a longer time period is specified by the EPA. If Respondent fails to revise the SEP Work Plan or SEP Completion Report in accordance with the EPA's comments, Respondent shall be subject to the stipulated penalties as set forth in Paragraph 42 of this Consent Agreement.

42. If the SEP referenced in Paragraphs 36-41 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay the following stipulated penalties:

a. In the event Respondents fail to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

(i) If the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Seven Thousand One Hundred Fifty Seven Dollars (\$7,157.00).

(ii) If the SEP is satisfactorily completed, but the Respondent spends less than Seven Thousand One Hundred Fifty Seven Dollars (\$7,157.00) on the SEP, Respondent shall pay as a stipulated penalty to the United States the amount of Seven Thousand One Hundred Fifty Seven Dollars (\$7,157.00) minus the amount that Respondent can demonstrate it spent upon the satisfactorily completed SEP.

b. If Respondent fails to timely and completely submit the SEP Completion Report required by this CAFO, Respondent shall be liable for and shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100.00) for each day after the due date until a complete report is submitted.

c. EPA shall determine whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP.

d. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the SEP or other resolution under this CAFO.

e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 1 of the Final Order portion of this Consent Agreement and Final Order.

43. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is 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.

44. Respondent further certifies that, to the best of their knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

45. For federal income tax purposes, Respondent agrees that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

46. 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."

47. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty

as stated in Paragraph 42 above 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 \$15.00 will be imposed after thirty (30) days and an additional \$15.00 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 of Seven Hundred Ninety Five Dollars (\$795.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number (TSCA-07-2012-0023) 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
P.O. Box 979077
St. Louis, Missouri 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 the check or other information confirming 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 shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

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

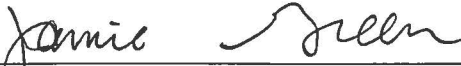
RESPONDENT
DALE W. AND SARA V. WANDS TRUST

Date: 12-26-12 By: Dale W Wands
Print Name: Dale W WANDS
Title: owner

Date: 12-26-12 By: Sara V. Wands
Print Name: Sara V. Wands
Title: Owner

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/7/13



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

Date: 1/4/13



Kelley Catlin
Office of Regional Counsel

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

Date: 1/15/13

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

IN THE MATTER OF Dale W. And Sara V. Wands Trust, Respondent
Docket No. TSCA-07-2012-0023

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 hand delivered to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Mail to:

Dale W. and Sara V. Wands Trust
606 Penny Lane
Rolla, Missouri 65401

Dated: 1/15/13



Kathy Robinson
Hearing Clerk, Region 7