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UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7

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

2013 OCT 22 PM 1:58

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of</b>	)	<b>Docket No. TSCA-07-2013-0009</b>
	)	
<b>Benny Canady</b>	)	
<b>4215 Roswell Avenue</b>	)	
<b>Kansas City, Kansas 66104</b>	)	
	)	
	)	
<b>Respondent</b>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Benny Canady (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 Revocation, 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 (the Act), 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 Benny Canady, an individual.

## **Section III**

### **Statutory and Regulatory Background**

5. Congress passed 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 property located at 2915 North 27<sup>th</sup> Street in Kansas City, Kansas; (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 contracts to lease the following target housing unit: 2915 North 27<sup>th</sup> Street in Kansas City, Kansas, on or about February 1, 2010.

13. Respondent failed to provide an EPA-approved pamphlet to lessee at 2915 North 27<sup>th</sup> Street in Kansas City, Kansas before lessee was obligated under contract to lease the target housing unit as required by 40 C.F.R. § 745.107(a)(1).

## **Section V**

### **Consent Agreement**

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

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

16. Respondent waives any right to contest the allegations set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

17. 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.

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

19. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty based on the Ability to Pay (ATP) determination. The ATP determination was based on the Respondent's Ability to Pay claim and financial information submitted to EPA. This financial information was reviewed, and it was determined that Respondent cannot pay any portion of the proposed penalty at this time.

**Section VI**

**Final Order**

Pursuant to the provisions of 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. Based on Respondent's Ability to Pay Determination, it has been determined that Respondent is not able to pay any portion of the proposed \$16,000 penalty at this time.
2. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENT:  
BENNY CANADY**

Date: 9/27/13

By:   
Benny Canady

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

Date: 10/18/2013

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

Date: 10/18/13

By:   
Robert W. Richards  
Attorney  
Office of Regional Counsel

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

Date: 10-22-13

Karina Borromeo  
KARINA BORROMEEO  
Regional Judicial Officer

IN THE MATTER OF Benny Canady, Respondent  
Docket No. TSCA-07-2013-0009

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:

richards.robert@epa.gov

Copy by First Class Mail to Respondent:

Benny Canady  
4215 Roswell Avenue  
Kansas City, Kansas 66104

Dated: 10/22/13



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7