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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
 ) Docket No. TSCA-10-2008-0092  
 )  
William V. Henson, )  
 ) CONSENT AGREEMENT AND  
 ) FINAL ORDER  
 )  
Respondent. )  
\_\_\_\_\_ )

I. AUTHORITY<sup>4</sup>

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. Pursuant to Section 16 of TSCA, and in accordance with Section 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and William V. Henson ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. A concise statement of the factual basis for alleging violations of TSCA, together with specific references to the provisions of TSCA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

## III. ALLEGATIONS

3.1 EPA has jurisdiction over this matter under Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act (RLBPHRA), 42 U.S.C. § 4852d(b)(5); Sections 15 and 16(a) of TSCA, 15 U.S.C. §§ 2614 - 2615(a); Sections 401 to 412 of TSCA, 15 U.S.C. §§ 2681-2692; and the regulations promulgated at 40 C.F.R. Part 745, Subpart F ("Disclosure Rule").

3.2 "Target housing" as defined at 40 C.F.R. § 745.103 of the Disclosure Rule means "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."

3.3 The house located at 1904 W. Indiana Avenue, Spokane, Washington, and built on or around 1910 ("Spokane house"), is "target housing" as defined at 40 C.F.R. § 745.103 of the Disclosure Rule.

3.4 “Lessor” as defined by 40 C.F.R. § 745.103 of the Disclosure Rule means “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.”

3.5 On July 1, 2004, William V. Henson, an individual, was the owner of the Spokane house and was offering the Spokane house for lease, rent, or sublease, and therefore was a Lessor as defined by 40 C.F.R. § 745.103 of the Disclosure Rule.

3.6 On July 1, 2004, an individual signed a month-to-month rental agreement to rent the Spokane house beginning July 1, 2004.

3.7 “Lessee” as defined by 40 C.F.R. § 745.103 of the Disclosure Rule means “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.” The individual that signed the month-to-month rental agreement to rent the Spokane house was a “Lessee.”

3.8 The “month-to-month rental agreement” referenced above was an agreement and/or contract to lease, rent, or sublease target housing as described at 40 C.F.R. § 745.103 of the Disclosure Rule and was not a short-term lease of 100 days or less as described by 40 C.F.R. § 745.101(c) of the Disclosure Rule.

3.9 The Disclosure Rule requires a Lessor of target housing to provide the Lessee with an EPA-approved lead hazard information pamphlet; provide the Lessee a Lead Warning Statement, either as an attachment to or within the contract to lease target housing; provide the

Lessee with a statement disclosing either the presence of known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either as an attachment to, or within, the contract to lease target housing; provide the Lessee with 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 or to provide a statement that no such records or reports were available, either as an attachment to, or within, the contract to lease target housing; document a statement by the Lessee affirming receipt of the information and the EPA-approved lead hazard information pamphlet, either as an attachment to, or within, each contract to lease target housing; and obtain the signature of the Lessor and the Lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, either as an attachment to, or within, each contract to lease target housing.

3.10. Respondent failed to comply with the Disclosure Rule by failing to: provide the Lessee with an EPA-approved lead hazard information pamphlet; provide the Lessee with a Lead Warning Statement, either as an attachment to or within the contract to lease target housing; provide the Lessee with a statement disclosing either the presence of known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either as an attachment to, or within, the contract to lease target housing; provide the Lessee with a list of any records or reports available to Respondent regarding lead-based paint and/or lead-based paint hazards in the target housing or to provide a statement that no such records or reports were available, either as an attachment to, or within, the contract to lease target housing; document a statement by the Lessee, affirming receipt of the information and the EPA-approved

lead hazard information pamphlet, either as an attachment to, or within, each contract to lease target housing; obtain the signature of the Lessor and the Lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, either as an attachment to, or within, each contract to lease target housing.

3.11. Under Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), each failure to comply with a provision of the RLBPHRA or with any rule or order issued under the RLBPHRA is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689.

#### IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.10., below, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, and other relevant factors, and in accordance with EPA's *Section 1018* –

*Disclosure Rule Enforcement Response Policy*, February 2000<sup>a</sup>, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$4,000.00.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case.

4.9. Respondent shall submit a photocopy of the check described above to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Lead Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, AWT-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

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<sup>a</sup> The February 2000 *Section 1018 – Disclosure Rule Enforcement Response Policy* was superseded by the December 2007 *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* after settlement discussions were initiated in this matter. The parties based this CAFO on the February 2000 policy.

4.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the penalty are not subject to review.

4.11. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.12. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original.

4.13. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

WILLIAM V. HENSON

  
Signature

Dated: 5-1-08

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

  
Mary Stroh Queitzsch  
Assistant Regional Counsel

Dated: 5-5-2008

## V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 6<sup>th</sup> day of May, 2008.



Richard G. McAllister  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one true and correct copy of the Consent Agreement and Final Order (CAFO) In the matter of: William V. Henson, Docket Number TSCA-10-2008-0092, were hand-delivered to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, ORC-158  
Seattle, Washington 98101

I also certify that a true and correct copy of the CAFO was mailed by certified mail, return receipt requested, to:

William V. Henson  
7522 W. Parker Rd  
Deer Park, Washington 99006

And to:

Timothy B. Fennessy, Esq.  
Dunn & Black, P.S.  
10 North Post  
Peyton Building, Suite 200  
Spokane, Washington 99201

Hand Delivered Copy to:

Mary S. Queitzsch, Attorney  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101

On this 7<sup>th</sup> day of May, 2008

  
\_\_\_\_\_  
For the  
U.S. Environmental Protection Agency  
Region 10

CAFO(TSCA-10-2008-0092)

U.S. ENVIRONMENTAL PROTECTION AGENCY  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1037