

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

2012 JUL 27 AM 10:41

BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	
Larry Brown)	Docket No. TSCA-07-2012-0018
Karen Brown)	
3102 West Lincoln Way)	
Marshalltown, Iowa 50158,)	
)	
Respondents)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA) and Larry Brown and Karen Brown (Respondents) 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 Respondents are individuals and who own and lease residential real property in Marshalltown, Iowa.

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. Respondents are each a “person” within the meaning of TSCA.

7. Respondents are each the “lessor” as defined by 40 C.F.R. § 745.103, for the lease of the residential units within the city of Marshalltown, Iowa, and which is located at 510 N. 3rd Avenue, Marshalltown, Iowa. This residence was constructed before 1978.

8. The unit described above is “target housing” as defined by 40 C.F.R. § 745.103.

9. On October 14, 2010, the city of Marshalltown notified Respondents of lead-based paint hazards present at the residential housing unit located at 510 N. 3rd Avenue, Marshalltown, Iowa. The notification was in writing and Respondents acquired documents and records pertaining to lead-based paint and lead-based paint hazards present on the property.

Violations

10. On September 19, 2011, EPA conducted an evaluation of Respondents’ compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and collected records and information from Respondents as part of that evaluation. Based upon that evaluation, the Complainant hereby states and alleges that Respondents have violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

11. The facts stated in Paragraphs 1 through 10 above are herein incorporated.

12. Respondent entered into a contract to lease the target housing unit located at 510 N. 3rd Avenue, Marshalltown, Iowa on February 1, 2011.

13. Respondents failed to disclose to the lessee of the target housing unit described in this count the presence of known lead-based paint before lessees became obligated under contract to lease the target housing unit, in violation of 40 C.F.R. § 745.107(a)(2).

14. Respondents failed to provide lessees with available records and reports concerning the presence of lead-based paint or lead-based paint hazards in the target housing unit described in this count, in violation of 40 C.F.R. § 745.107(a)(4).

15. Respondents' failure to perform the acts indicated in this count are violations of 40 C.F.R. §§ 745.107(a)(2) and (a)(4) and, in accordance with 40 C.F.R. § 745.118(e), are violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**Section V
Consent Agreement**

16. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth herein.

17. Respondents neither admit nor deny the factual allegations set forth above.

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

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

20. Respondents certify 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.

21. Respondents consent to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

22. This CAFO addresses and resolves all civil claims for the TSCA violations and facts alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law. Respondents understand that 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 required under this CAFO, 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. Respondents shall pay a civil penalty of Two Thousand Four Hundred Dollars (\$2,400) according to the schedule, which is attached hereto and marked "Exhibit 1". The payment shall be made at the address below. The payment shall identify Respondent by name

*In the Matter of
Larry Brown and Karen Brown
TSCA-07-2012-0018*

and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U. S. 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 the check or other information confirming payment shall simultaneously be sent to the following:

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

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

*In the Matter of
Larry Brown and Karen Brown
TSCA-07-2012-0018*

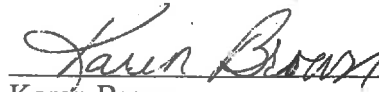
RESPONDENTS

Date: 7-23-12



Larry Brown

Date: 7-23-12



Karen Brown

In the Matter of
Larry Brown and Karen Brown
TSCA-07-2012-0018

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/27/2012


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

Date: 7-27-2012

By: Raymond C. Bosch
Raymond C. Bosch
Office of Regional Counsel

*In the Matter of
Larry Brown and Karen Brown
TSCA-07-2012-0018*

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

Date: July 27, 2012 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Larry & Karen Brown

Rate Period: Quarterly

Nominal Annual Rate: 1.000 %

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Penalty	08/01/2012	2,400.00	1		
2 Payment	08/01/2012	302.63	8	Quarterly	05/01/2014

AMORTIZATION SCHEDULE - U.S. Rule (no compounding)

	Date	Penalty	Payment	Interest	Principal	Balance
Penalty	08/01/2012	2,400.00				2,400.00
1	08/01/2012		302.63	0.00	302.63	2,097.37
2	11/01/2012		302.63	5.24	297.39	1,799.98
2012 Totals		2,400.00	605.26	5.24	600.02	
3	02/01/2013		302.63	4.50	298.13	1,501.85
4	05/01/2013		302.63	3.75	298.88	1,202.97
5	08/01/2013		302.63	3.01	299.62	903.35
6	11/01/2013		302.63	2.26	300.37	602.98
2013 Totals		0.00	1,210.52	13.52	1,197.00	
7	02/01/2014		302.63	1.51	301.12	301.86
8	05/01/2014		302.63	0.77	301.86	0.00
2014 Totals		0.00	605.26	2.28	602.98	
Grand Totals		2,400.00	2,421.04	21.04	2,400.00	

IN THE MATTER OF Larry Brown and Karen Brown, Respondents
Docket No. TSCA-07-2012-0018

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:

Raymond C. Bosch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Larry Brown
Karen Brown
3102 West Lincoln Way
Marshalltown, Iowa 50158

Dated: 7/27/12


Kathy Robinson
Hearing Clerk, Region 7