

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

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of</b>	)	
	)	
PMR Properties, LLC,	)	<b>Docket No. TSCA-07-2020-0021</b>
	)	
	)	
<b>Respondent</b>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7 and PMR Properties, LLC (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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**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* (Lead Disclosure Rule), promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

**Parties**

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director, Enforcement and Compliance Assurance Division, EPA, Region 7.

4. Respondent is PMR Properties, LLC, an LLC in good standing under the laws of the states of Iowa and Nebraska.

### **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 *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 1018 of the Act required the 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.

7. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

8. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. §§ 745.107 (disclosure requirements for sellers and lessors), 745.110 (opportunity to conduct an evaluation), 745.113 (certification and acknowledgement of disclosure) or 745.115 (agent responsibilities) is a violation of 42 U.S.C. § 4852d(b)(5) and of TSCA Section 409, 15 U.S.C. § 2689.

9. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103 define “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

10. The regulation at 40 C.F.R. § 745.103 defines “common area” as a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

11. The regulation at 40 C.F.R. § 745.103 defines “lead-based paint” as paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

12. The regulation at 40 C.F.R. § 745.103 defines “lead-based paint hazard” as any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse health effects as established by the appropriate Federal agency.

13. The regulation at 40 C.F.R. § 745.103 defines “lessee” as 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.

14. The regulation at 40 C.F.R. § 745.103 defines “lessor” as 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.

15. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA. Each day that such violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which limited penalties assessed for violations of Section 409 of TSCA to not more than \$10,000 per violation. Each day that such a violation continues constitutes a separate violation of Section 409. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$18,149 for violations that occurred after November 2, 2015, and for which penalties are assessed on or after January 13, 2020.

### **General Factual Allegations**

16. On or about September 20, 2018, and May 29, 2019, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted inspections at Respondent’s offices at 417 North 17<sup>th</sup> Street, Council Bluffs, Iowa 51501 to evaluate Respondent’s compliance with TSCA and the requirements of the Lead Disclosure Rule (EPA inspections).

17. In January 2019, the Iowa Department of Public Health (IDPH) informed EPA that on July 6, 2012 and February 20, 2013 it had conducted lead-based paint inspections on Respondent’s property located at [REDACTED], Council Bluffs, Iowa 51501 (the IDPH Inspection Reports). On January 28-30, 2019, IDPH sent EPA copies of the IDPH Inspection Reports. The IDPH Inspection Reports showed positive results for lead-based paint in various units and common areas at that property.

18. Respondent is, and at all times referred to herein was, a business doing business in the state of States of Iowa and Nebraska under the registered name PMR Properties, LLC.

19. Respondent, at all times referred to herein, was a “person” within the meaning of TSCA.

20. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, for the lease of [REDACTED], Council Bluffs, Iowa 51501; [REDACTED], Omaha, Nebraska 68111; [REDACTED], Omaha, Nebraska 68111; [REDACTED], Omaha, Nebraska 68110; [REDACTED], Omaha, Nebraska, 68110; [REDACTED], Council Bluffs, Iowa 51503; [REDACTED], Council Bluffs, Iowa 51501; and [REDACTED], Council Bluffs, Iowa 51501 (collectively, the Properties).

21. The Properties were constructed before 1978.

22. The Properties and units therein are “target housing” as defined by 40 C.F.R. § 745.103.

23. At all times relevant to this Consent Agreement and Final Order, the Properties were owned by a party other than Respondent and occupied.

#### **Allegations of Violation**

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

#### **Counts 1-6**

25. The facts stated in Paragraphs 15 through 23 above are herein incorporated.

26. Pursuant to 40 C.F.R. § 745.107(a)(1), prior to a purchaser or lessee being obligated under any contract to purchase or lease target housing, the seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet that has been approved for use in that State by EPA.

27. Respondent entered into a contract to lease the target housing unit located at [REDACTED], Council Bluffs, Iowa, 51501 on or about October 1, 2017.

28. Respondent entered into a contract to lease the target housing unit located at [REDACTED], Omaha, Nebraska, 68111 on or about May 1, 2018.

29. Respondent entered into a contract to lease the target housing unit located at [REDACTED], Omaha, Nebraska 68111 on or about September 1, 2018.

30. Respondent entered into a contract to lease the target housing unit located at [REDACTED]

██████████ Omaha, Nebraska 68110 on or about September 1, 2018.

31. Respondent entered into a contract to lease the target housing unit located at ██████████  
██████████ Omaha Nebraska 68110 on or about January 8, 2018.

32. Respondent entered into a contract to lease the target housing unit located at ██████████  
██████████ Council Bluffs, Iowa 51503 on or about August 1, 2018.

33. The September 20, 2018 EPA inspection revealed that Respondent failed to provide the lessees of ██████████ Council Bluffs, Iowa 51501; ██████████  
Omaha, Nebraska 68111; ██████████, Omaha, Nebraska 68111; ██████████,  
Omaha, Nebraska 68110; ██████████ Omaha, Nebraska, 68110; and ██████████  
Council Bluffs, Iowa 51503 with an EPA-approved lead hazard information pamphlet before lessees were obligated under contract to lease the target housing units.

34. Respondent's failures to provide the EPA-approved lead hazard information pamphlet before the lessees were obligated under contract to lease the target housing units are violations of 40 C.F.R. § 745.107(a)(1) and pursuant to 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d(b)(5), 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.

Counts 7-8

35. The facts stated in Paragraphs 15 through 23 above are herein incorporated.

36. Pursuant to 40 C.F.R. § 745.107(a)(2), prior to a purchaser or lessee being obligated under any contract to purchase or lease target housing, the seller or lessor shall disclose the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

37. Respondent entered into a contract to lease the target housing unit located at ██████████  
██████████ Council Bluffs, Iowa 51501 on or about April 1, 2019.

38. Respondent entered into a contract to lease the target housing unit located at ██████████  
██████████ Council Bluffs, Iowa 51501 on or about October 1, 2018.

39. The May 29, 2019 EPA inspection revealed that Respondent failed to provide the lessees of ██████████ Council Bluffs, Iowa 51501; and ██████████ Council Bluffs,  
Iowa 51501 with information disclosing the presence of any known lead-based paint and lead-based paint hazards in the target housing units and any additional information available concerning the known lead-based paint and lead-based paint hazards, such as the basis for determination that the lead-based paint and lead-based paint hazards exist, the location of the lead-based paint and lead-based paint hazards, and the condition of the painted surfaces, before

lessees were obligated under contract to lease the target housing units.

40. Respondent's failures to disclose the presence of any known lead-based paint and lead-based paint hazards in the target housing before the lessees were obligated under contract to lease the target housing units are violations of 40 C.F.R. § 745.107(a)(2) and pursuant to 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d(b)(5), 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.

#### Counts 9-10

41. The facts stated in Paragraphs 15 through 23 above are herein incorporated.

42. Pursuant to 40 C.F.R. § 745.107(a)(4), prior to a purchaser or lessee being obligated under any contract to purchase or lease target housing, the seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to the lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

43. The May 29, 2019 EPA inspection revealed that Respondent failed to provide the lessees of [REDACTED] Council Bluffs, Iowa 51501; and [REDACTED], Council Bluffs, Iowa 51501 with the IDPH Inspection Reports before lessees were obligated under contract to lease the target housing units.

44. Respondent's failures to provide the record or report to the lessees associated with the target housing units before the lessees were obligated under contract to lease the target housing units are violations of 40 C.F.R. § 745.107(a)(4) and pursuant to 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d(b)(5), 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

45. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) admits to the facts stipulated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action

order;

- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

46. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

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

### **Penalty Payment**

48. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Forty Thousand, Eight Hundred Dollars (\$40,800) as set forth below.

49. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify 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:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

50. 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

Catherine R.M. Chiccine, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard

Lenexa, Kansas 66219.

51. Respondent understands that its failure to timely pay any portion of the civil penalty 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 begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

### **Effect of Settlement and Reservation of Rights**

52. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

53. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph directly below.

54. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

55. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

56. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

57. This Consent Agreement and Final Order constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

### **General Provisions**

58. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and

conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

59. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

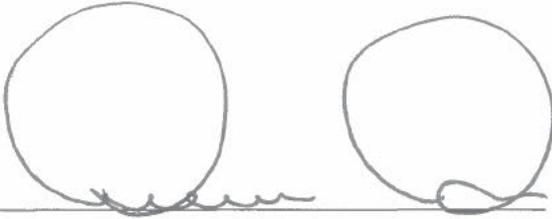
60. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

61. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**

PMR Properties, LLC

Date: 6/24/20

By: 

PATRICK Riggs  
Print Name

Managing Member  
Title

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

Date: \_\_\_\_\_

**DAVID COZAD**

Digitally signed by DAVID  
COZAD  
Date: 2020.07.09 16:17:50 -05'00'

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division

Date: \_\_\_\_\_

**CATHERINE CHICCINE**

Digitally signed by CATHERINE  
CHICCINE  
Date: 2020.07.13 07:36:17 -05'00'

\_\_\_\_\_  
Catherine R.M. Chiccine  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 16(a) of TSCA, 42 U.S.C. § 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

**KARINA BORROMEO**

Digitally signed by KARINA  
BORROMEO

Date: 2020.07.14 09:39:27 -05'00'

\_\_\_\_\_  
Karina Borrromeo  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I certify that 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 via Email to Complainant:

Catherine R.M. Chiccine  
U.S. Environmental Protection Agency, Region 7  
Chiccine.catherine@epa.gov

Copy via Email to Respondent:

Patrick Rigg  
PMR Properties, LLC  
patrickrigg@pmrproperties.com

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**LISA HAUGEN** Digitally signed by LISA HAUGEN  
Date: 2020.07.14 14:06:37 -05'00'

Signed \_\_\_\_\_