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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. TSCA-10-2012-0114
)
Robert Kerr)
412 Laurel Drive) **CONSENT AGREEMENT AND**
Everett, Washington 98201) **FINAL ORDER**
)
Respondent.)
_____)

I. STATUTORY AUTHORITY

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 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2686.

1.2. 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 has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to TSCA Section 16, 15 U.S.C. § 2691, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Robert Kerr (“Respondent”) agree 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), 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. The Director of the Office of Air, Waste and Toxics, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 16 of TSCA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of TSCA together with the specific provisions of TSCA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Title X of the Residential Lead-based Paint Hazard Reduction Act (which became part of the Toxic Substances Control Act (TSCA)) and EPA’s regulations implementing this law, the Real Estate Notification and Disclosure Rule (Disclosure Rule), require a lessor, when leasing target housing (i.e. housing built before 1978), to disclose information regarding lead paint and lead-based paint hazards to lessees.

3.2 Under 40 C.F.R. § 745.113(b)(1), a lessor must provide, within or in an attachment to each lease contract, a lead warning statement.

3.3 Under 40 C.F.R. § 745.113(b)(2), a lessor must provide, within or in an attachment to each lease contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or a statement indicating no knowledge of the presence of lead-based paint hazards.

3.4 Under 40 C.F.R. § 745.113(b)(3), a lessor must provide, within or as an attachment to each lease contract, a list of any records or reports relevant to lead-based paint hazards in target housing which were provided to the lessees, or a statement indicating that no such reports or records are available.

3.5 Under 40 C.F.R. § 745.113(b)(4), a lessor must obtain, within or as an attachment to each lease contract, a statement from each lessee affirming receipt of the lead-based paint disclosure statement required by 40 C.F.R. § 745.113(b)(2), a list of any records and reports relevant to lead-based paint hazards required by 40 C.F.R. § 745.113(b)(3), and the EPA-approved pamphlet entitled “Protect Your Family from Lead in Your Home” required by 15 U.S.C. § 2696.

3.6 Under 40 C.F.R. § 745.113(b)(6), a lessor of target housing must obtain, within or as an attachment to each lease contract, the signatures of lessors, agents, and lessees certifying the accuracy of their statements, and dates of signatures.

3.7 Respondent is the owner and lessor of properties in Bellingham, Washington located at: 1005 Newell Street, 1016 High Street, 1106 High Street, 1108 High Street, 1127 High Street, 1310 Grant Street, 1314 Humboldt Street, 1436 Franklin Street, 1523 Humboldt Street, 1525 Humboldt Street, 610 East Maple Street, 614 ½ East Maple Street, 614 East Maple Street, 618 East Maple Street, and 900 Key Street.

3.8 From 2008-2010, Respondent’s properties, enumerated above, contained at least 26 units of target housing as defined in 40 C.F.R. § 745.107.

3.9 Respondent leased these 26 units a total of 67 times.

3.11 Respondent failed to provide, within or as an attachment to each lease contract, a lead warning statement, in violation of 40 C.F.R. § 745.113.

3.12 Respondent failed to provide, within or as an attachment to each lease contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or a statement indicating no knowledge of the presence of lead-based paint hazards, in violation of 40 C.F.R. § 745.113.

3.13 Respondent failed to provide, within or as an attachment to each lease contract, a list of any records or reports relevant to lead-based paint hazards in target housing which were provided to the lessees, or a statement indicating that no such reports or records are available, in violation of 40 C.F.R. § 745.113.

3.14 Respondent failed to obtain, within or as an attachment to each lease contract, a statement from each lessee affirming receipt of lead-based paint disclosure statement, a list of any records and reports relevant to lead-based paint hazards, and an EPA-approved pamphlet entitled "Protect Your Family from Lead in Your Home," in violation of 40 C.F.R. § 745.113.

3.15 Respondent failed to obtain, within or as an attachment to each lease contract, the signatures of the lessors, agents, and lessees certifying the accuracy of their statements, and dates of signatures.

IV. CONSENT AGREEMENT

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

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

4.3. In light of the nature of the violation, Respondent's actions to correct the violations after having been notified by Complainant, and Respondent's willingness to settle this matter without litigation, and in accordance with the *Section 1018 – Disclosure Rule*

Enforcement Response and Penalty Policy, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$21,800.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order contained in Section V of this CAFO.

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

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

Kim Farnham, TSCA Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop AWT-128
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. Each party shall bear its own costs in bringing or defending this action.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of 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.

4.9. 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 thirty (30) days of the effective date of the Final Order contained herein.

4.10. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Section III and is currently in compliance with all applicable TSCA requirements at each of the facilities under its control.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

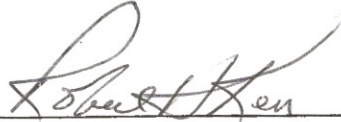
4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

4-13-12

FOR RESPONDENT:

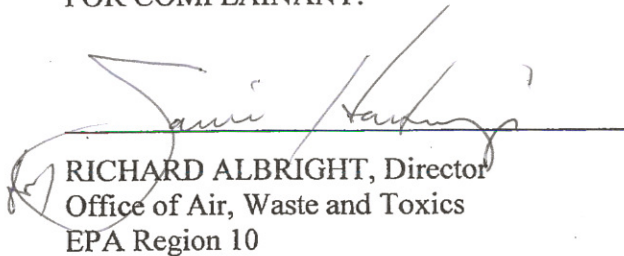


ROBERT KERR, Owner

DATED:

5-2-12

FOR COMPLAINANT:



RICHARD ALBRIGHT, Director
Office of Air, Waste and Toxics
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to TSCA for the violations alleged in Part III. 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 promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 8th day of May, 2012.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

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HEARINGS CLERK
EPA--REGION 10

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Robert Kerr, Docket No. TSCA-10-2012-0114** was filed, and served as follows, on the signature date below.

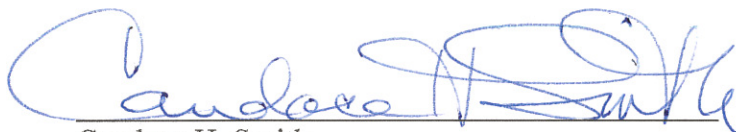
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Jillian Bunyan
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Robert Kerr
412 Laurel Drive
Everett, WA 98201

DATED this 8th day of May, 2012.



Candace H. Smith
Regional Hearing Clerk
EPA, Region 10