



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 28 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6303

E. Sean Griggs
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204

Re: In the Matter of: Kent and Amy Ellett (Speedway, Indiana)
Consent Agreement and Final Order, Docket No. TSCA- 05-2008-0017 *JS*

Dear Mr. Griggs:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on July 28, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$400.00 is to be paid in the manner described in paragraphs 29 and 30. Please be certain that the number **BD 2750847X009** *JS* and the docket number are written on both the transmittal letter and on the check. Payment is due by August 27, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Scott Cooper
Scott Cooper
Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

REGIONAL OFFICE
CHICAGO, IL
JUL 29 11 31 28

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. <i>TSCA-05-2008-0017</i> <i>EL</i>
Kent and Amy Ellett)	Proceeding to Assess a Civil Penalty Under
Speedway, Indiana,)	Section 16(a) of the Toxic Substances
Respondents.)	Control Act, 15 U.S.C. § 2615(a)

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondents are Kent and Amy Ellett, who reside at 5335 Carlton Way, Speedway, Indiana 46224.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondents consent to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor denies the factual allegations in this CAFO.

8. Respondents waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and their right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 42 U.S.C. § 4852d, requires the Administrator of U.S. EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, U.S. EPA promulgated regulations at 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 (Disclosure Rule) pursuant to 42 U.S.C. § 4852d.

11. 40 C.F.R. § 745.103 defines 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 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

12. 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.

13. 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. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and, the signatures and dates of signature of the lessor and lessee certifying the accuracy of their statements.

15. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

16. Section 1018(b)(5) of the Lead Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f) authorize the Administrator of U.S. EPA to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. At various times prior to the date of this Complaint, Respondents owned the

following residential dwellings: 1762 Ellen Drive, 4931 W. 11th Street, and 4933 W. 11th Street, Speedway, Indiana (Respondents' properties).

18. Respondents' properties are "target housing" as defined in 40 C.F.R. § 745.103.

19. On the following dates, Respondents either directly or through their authorized agent, entered into the following seven lease agreements (contracts) with individuals for the lease of Respondents' properties:

Address	Date of Lease
1762 Ellen Drive	April 1, 2005
4931 W. 11 th Street	June 29, 2002
4931 W. 11 th Street	September 9, 2005
4931 W. 11 th Street	May 4, 2006
4933 W. 11 th Street	March 31, 2004
4933 W. 11 th Street	August 1, 2004
4933 W. 11 th Street	August 5, 2005

20. Each of the seven contracts referred to in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Respondents are "lessors," as defined in 40 C.F.R. § 745.103, because they offered the target housing, referred to in paragraph 19, above, for lease.

22. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing, referred to in paragraph 19, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

23. Respondents failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondents' properties at 1762 Ellen Drive, 4931 W. 11th Street, and 4933 W. 11th Street, Speedway, Indiana, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. Respondents failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the lease of Respondents' properties at 1762 Ellen Drive, 4931 W. 11th Street, and 4933 W. 11th Street, Speedway, Indiana, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. Respondents failed to include 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 that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondents' properties at 1762 Ellen Drive, 4931 W. 11th Street, and 4933 W. 11th Street, Speedway, Indiana, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. Respondents failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Respondents' properties at 1762 Ellen Drive, 4931 W. 11th Street, and 4933 W. 11th Street, Speedway, Indiana, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. Respondents failed to include the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Respondents' properties at 1762 Ellen Drive, 4931 W. 11th Street, and 4933 W. 11th Street, Speedway, Indiana, in violation of 40 C.F.R.

§ 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

28. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$400.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondents, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered U.S. EPA's *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* dated December 2007.

29. Within 30 days after the effective date of this CAFO, Respondents must pay a \$400.00 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must state "In the Matter of Kent and Amy Ellett," the docket number of this CAFO, and the billing document number.

30. A transmittal letter stating Respondents' names, the case title, Respondents' complete address, the case docket number and the billing document number must accompany the payment. Respondents must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Scott Cooper (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jeffrey A. Cahn (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondents do not pay the civil penalty timely, then U.S. EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondents must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

34. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

35. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

36. This CAFO does not affect Respondents' responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state, and local laws.

37. Respondents certify that they are complying with the Lead-Act and the Disclosure Rule.

38. The terms of this CAFO bind Respondents, and their successors and assigns.

39. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorney's fees in this action.

41. This CAFO constitutes the entire agreement between the parties.

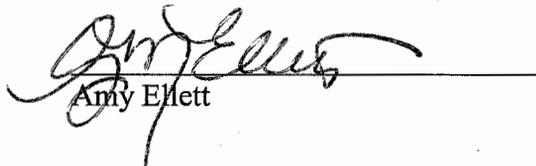
Kent Ellett, Respondent

July 3, 2008
Date


Kent Ellett

Amy Ellett, Respondent

5 July 2008
Date


Amy Ellett

United States Environmental Protection Agency, Complainant

7/22/08
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

Kent and Amy Ellett

Docket No. *TSCA-052008-0017 22*

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7/24/08
Date

Walter W. Kovalick
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administration involving Kent and Amy Ellett (Speedway, Indiana) was filed on July 28, 2008, with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7001 0320 0005 8921 6303, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

E. Sean Griggs
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jeffery A. Cahn, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA - 05-2008-0017 *DB*

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