



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

JUN 08 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 11680 0000 7667 2290

Wilfredo and Rosemary Fuentes
3063 North Humboldt Boulevard
Milwaukee, Wisconsin 53212

Wilfredo and Rosemary Fuentes, Wisconsin TSCA-05-2010-0012

Dear Mr. and Mrs. Fuentes:

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 June 8, 2010 with the Regional Hearing Clerk.

Respondents were assessed no civil penalty for these violations.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Pamela Grace".

Pamela Grace
Pesticides and Toxic Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Wilfredo and Rosemary Fuentes
Milwaukee, Wisconsin

Respondents.

RECEIVED
JUN - 8 2010
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Docket No. TSCA-05-2010-0012

Proceeding to Assess a Civil
Penalty Under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2615(a)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

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, Region 5.
3. Respondents are Wilfredo and Rosemary Fuentes, individuals doing business in the State of Wisconsin.
4. Pursuant to 40 C.F.R. § 22.13(b), 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).
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 terms of this CAFO, and EPA's waiver of any penalties for the violations set forth in this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondents admit the jurisdictional allegations in this CAFO, and neither admit nor deny 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, required the Administrator of 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, 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). 40 C.F.R. § 745.102(a) required owners of more than four residential dwellings to comply with the Disclosure Rule by September 6, 1996.

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. § 745.100 requires, among other things, that the lessor of target housing complete the required disclosure activities before a lessee is obligated under any contract to purchase or lease target housing.

15. 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 signatures and dates of signature of the lessor and lessee certifying the accuracy of their statements.

16. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, 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.

17. 40 C.F.R. Part § 745.113(b)(3) requires a lessor to include within each contract or as an attachment to each contract to lease target housing, 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 a statement that no such records are available.

18. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each contract, 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.

19. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract, the signatures of the lessor, the agent, and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

20. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing 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).

21. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

22. Between at least May 6, 2005, and August 1, 2006, Respondents owned residential apartment buildings in Milwaukee, Wisconsin located at 3303 North Holton, 422 East Concordia, and 424 East Concordia (Respondents' Properties).

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

24. On September 26, 2008, Complainant issued an administrative subpoena under the authority of Section 11 of TSCA, 15 U.S.C. § 2610 to Respondent Wilfredo Fuentes, seeking among other things, copies of all rental agreements and lead-based paint disclosure documentation for rental transactions at the apartment buildings owned by Respondents.

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

Address	Unit	Date of Lease
3303 North Holton Avenue, Milwaukee, Wisconsin	Upper	August 1, 2006
422 East Concordia Avenue, Milwaukee, Wisconsin	Upper	May 6, 2005
422 East Concordia Avenue, Milwaukee, Wisconsin	Upper	August 1, 2006
424 East Concordia Avenue, Milwaukee, Wisconsin	Lower	August 1, 2006

26. Each of the four Contracts referenced in paragraph 25 covered a term of occupancy greater than 100 days.

27. Respondents are "lessors," as defined in 40 C.F.R. § 745.103, because they offered the target housing referenced in paragraph 25 for lease.

28. Each individual who signed a lease to pay rent in exchange for occupancy of a dwelling referenced in paragraph 25 became a "lessee" as defined in 40 C.F.R. § 745.103.

29. On June 1, 2009, EPA advised Respondents by letter that EPA was planning to file a civil administrative complaint against Respondents for specific alleged violations of Section 1018 associated with the Contracts referenced in paragraph 25, and that the complaint would seek a civil penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint. If Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty, EPA asked Respondents to submit specific financial documents.

30. On June 3, 2009, Respondents received the pre-filing notice letter referred to in paragraph 29, above. Respondents replied to the letter on June 15, 2009. Respondents have claimed an inability to pay the proposed, approximate civil penalty and have provided facts or other information concerning their ability to pay the proposed, approximate civil penalty.

Counts 1 through 4

31. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.

32. Respondents failed to include within the following contracts for target housing, or as an attachment to such contract, 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:

- Count 1:** August 1, 2006 lease for 3303 North Holton Milwaukee, Wisconsin;
- Count 2:** May 6, 2005 lease for 422 East Concordia, Milwaukee, Wisconsin;
- Count 3:** August 1, 2006 lease for 422 East Concordia, Milwaukee, Wisconsin; and
- Count 4:** August 1, 2006 lease for 424 East Concordia, Milwaukee, Wisconsin.

33. Based on the foregoing, Respondents violated 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5 through 8

34. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.

35. Respondents failed to include within the following contracts for target housing, or as an attachment to such contract, 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 required under 15 U.S.C. § 2696:

- Count 5: August 1, 2006 lease for 3303 North Holton Milwaukee, Wisconsin;
- Count 6: May 6, 2005 lease for 422 East Concordia, Milwaukee, Wisconsin;
- Count 7: August 1, 2006 lease for 422 East Concordia, Milwaukee, Wisconsin; and
- Count 8: August 1, 2006 lease for 424 East Concordia, Milwaukee, Wisconsin.

36. Based on the foregoing, Respondents have violated 40 C.F.R. § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 9 through 12

37. Complainant incorporates paragraphs 1 through 30 of this CAFO as if set forth in this paragraph.

38. Respondents failed to include within the following contracts for target housing, or as an attachment to such contract, the signatures of the lessor, the agent, and the lessee, certifying to the accuracy of their statements and the dates of such signatures:

- Count 9: August 1, 2006 lease for 3303 North Holton Milwaukee, Wisconsin;
- Count 10: May 6, 2005 lease for 422 East Concordia, Milwaukee, Wisconsin;
- Count 11: August 1, 2006 lease for 422 East Concordia, Milwaukee, Wisconsin; and
- Count 12: August 1, 2006 lease for 424 East Concordia, Milwaukee, Wisconsin.

39. Based on the foregoing, Respondents violated 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Civil Penalty

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 \$0. In determining that a penalty is not appropriate for this matter, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondents' ability to pay, Respondent's assets, income and liabilities, the effect on Respondents' ability to continue to do business, any history of such prior violations, and the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

General Provisions

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

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

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

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

Each person signing this CAFO 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.

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

This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Wilfredo and Rosemary Fuentes, Respondents
Docket No.

5/2/10
Date

Wilfredo Fuentes
Wilfredo Fuentes

5/2/10
Date

Rosemary Fuentes
Rosemary Fuentes

United States Environmental Protection Agency, Complainant

5/27/10
Date


Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Wilfredo and Rosemary Fuentes
Docket No. TSCA-05-2010-0012

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.**

June 4, 2010
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY

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 administrative action involving Wilfredo and Rosemary Fuentes, was filed on June 8, 2010, with the Regional Hearing Clerk (E-19J), 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.7009 1680 0000 766702290 to:

Wilfredo and Rosemary Fuentes
3063 North Humboldt Boulevard
Milwaukee, Wisconsin 53212

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
John Matson, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD

Frederick Brown

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

Docket No. TSCA-05-2010-0012

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