

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

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
 Dana and Lori Schultz,) **Docket No. TSCA-07-2017-0345**
)
 Respondents.)
 _____)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7, and Dana and Lori Schultz (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 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 Respondents have 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 Chief of the Toxics and Pesticides Branch, Water, Wetlands and Pesticides Division, EPA, Region 7.

4. Respondents are Dana and Lori Schultz, landlords doing business in the state of 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 phase-out 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. 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.

8. 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.

9. 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.

10. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. §§ 107, 745.110, 745.113 or 745.115 is a violation of 42 U.S.C. § 4852d(b)(5) and of TSCA Section 409, 15 U.S.C. § 2689.

11. Section 1018(b)(5) of the Residential Lead Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), authorizes the EPA Administrator to assess a civil penalty of up to \$10,000 for each violation of the Residential Lead Based Paint Hazard Reduction Act, prohibited under Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty authority set forth under Section 16 of TSCA, 15 U.S.C. § 2615. The Federal Civil Penalties Inflation Adjustment Improvements

Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalties to \$17,047 for violations that occur after November 2, 2015.

General Factual Allegations

12. On or about July 14, 2016, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, a representative of the EPA conducted an inspection to evaluate Respondent's compliance with TSCA and the requirements of the Lead Disclosure Rule ("EPA inspection"). A copy of the inspection report was mailed to Respondent on August 9, 2016.

13. Respondents are, and at all times referred to herein were, individuals doing business in the state of Nebraska.

14. Each Respondent, at all times referred to herein, is a "person" within the meaning of TSCA.

15. Respondents are the "lessors" as defined by 40 C.F.R. § 745.103, for the lease of 302 West Amity Street, Clarks, Nebraska (the Property).

16. The Property was constructed before 1978.

17. The Property is "target housing" as defined by 40 C.F.R. § 745.103.

18. On or about November 9, 2015, the Nebraska Department of Health & Human Services conducted a lead inspection at 302 West Amity Street, Clarks, Nebraska.

19. The Nebraska Department of Health & Human Services lead inspection revealed multiple locations in and around the Property where lead-based paint was detected using an X-ray Fluorescent Analyzer (XRF).

20. The Nebraska Department of Health & Human Services sent Respondents the results of the lead inspection via certified mail on January 4, 2016.

21. Respondent, Lori Schultz, signed for the certified mail on January 8, 2016.

22. As a result of the EPA inspection, and additional information obtained by the agency, Complainant has determined that violations of the Lead Disclosure Rule, 40 C.F.R. Part 745, Subpart F, and Section 409 of TSCA, 15 U.S.C. § 2689, have occurred.

Allegations of Violation

23. The Complainant hereby states and alleges that Respondents have violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

24. The facts stated in Paragraphs 12 through 22 above are herein incorporated.

25. Respondents entered into a contract to lease the target housing unit located at 302 West Amity Street, Clarks, Nebraska on or about April 22, 2016. All occupants were older than age eighteen.

26. Pursuant to 40 C.F.R. § 745.107(a)(4), before the lessee is obligated under any contract to lease target housing, the lessor shall provide the lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased.

27. The EPA inspection revealed that Respondents failed to provide a copy of the Nebraska Department of Health & Human Services lead inspection, conducted at 302 Amity Street, prior to April 22, 2016 when lessee was obligated under the contract. The inspection was performed on November 9, 2015 and received by Respondents on January 8, 2016.

28. Respondents' failure to provide a copy of the Nebraska Department of Health & Human Services lead inspection to the lessee before the lessee was obligated under contract to lease the target housing unit is a violation of 40 C.F.R. § 745.107(a)(4) and pursuant to 40 C.F.R. § 745.118(e), a violation of 42 U.S.C. § 4852d(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

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

- (a) admit the jurisdictional allegations set forth herein;
- (b) neither admit nor deny the specific factual allegations stated herein;
- (c) consent to the assessment of a civil penalty, as stated herein;
- (d) consent to the issuance of any specified compliance or corrective action order;
- (e) consent to any conditions specified herein;
- (f) consent to any stated Permit Action;
- (g) waive any right to contest the allegations set forth herein; and
- (h) waive its right to appeal the Final Order accompanying this Consent Agreement.

30. Respondents consent to the issuance of this Consent Agreement and Final Order and consent for the purposes of settlement to the payment of the civil penalty specified herein.

31. Respondents 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

32. Respondents agree that, in settlement of the claims alleged herein, Respondents shall pay a mitigated civil penalty of Two Thousand Seven Hundred Fifty-Four Dollars (\$2,754), as set forth below.

33. Respondents shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondents 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
P.O. Box 979077
St. Louis, Missouri 63197-9000

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

34. 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

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

35. Respondents understand that their 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

36. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondents' 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.

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

38. Respondents certify by the signing of this Consent Agreement that they are presently in compliance with all requirements of TSCA and its implementing regulations.

39. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency 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 Respondents' obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

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

General Provisions

41. By signing this Consent Agreement, the Respondents certify that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.

42. 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.

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

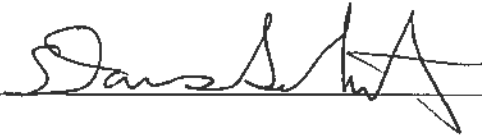
44. This Consent Agreement and Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondents

with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENTS

Dana and Lori Schultz

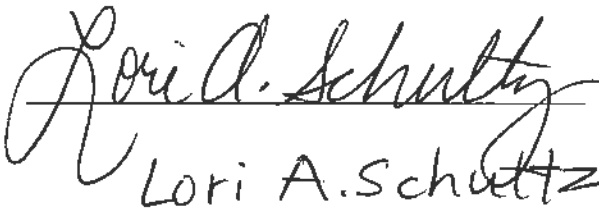
Date: 8-27-17

By: 

Dana Schultz
Print Name

Title

Date: 8-27-17

By: 


Lori A. Schultz
Print Name

Title

COMPLAINANT

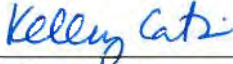
U. S. Environmental Protection Agency

Date: 8/31/2017



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

Date: 8/31/17



Kelley Catlin
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.

Respondents are 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
Karina Borromeo
Regional Judicial Officer

Sept. 11, 2017
Date

IN THE MATTER OF Dana and Lori Schultz, Respondent
Docket No. TSCA-07-2017-0345

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 emailed to Attorney for Complainant:

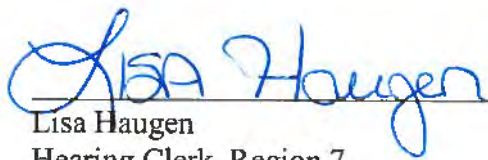
Kelley Catlin

Copy by email to Respondent:

Dana Schultz - email address

Lori Schultz - email address

Dated: Sept 12, 2017



Lisa Haugen
Hearing Clerk, Region 7