

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

**901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of:

FAIRWAYS, LLC.

St. Louis, Missouri

Respondent

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DOCKET NO. TSCA-07-2011-0005

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 and Fairways, LLC, a limited liability corporation, 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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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 (CAFO) serves as notice that EPA has reason to believe that Fairways, LLC 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*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Fairways, LLC, a limited liability corporation.

Section III

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 Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required 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. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Section IV

General Factual Allegations

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

7. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, for the leases of 7004 Minnesota, Second Floor, and 7002 Michigan, Second Floor, both in St. Louis, Missouri (the Properties).

8. The Properties were constructed before 1978.

9. The Properties are “target housing” as defined by 40 C.F.R. § 745.103.

Violations

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

Count I

11. The facts stated in Paragraphs 1 through 9 above are herein incorporated.

12. Respondent entered into a contract to lease the target housing unit located at 7004 Minnesota, Second Floor, St. Louis, Missouri on or about December 16, 2009.

13. Respondent failed to provide the lessee of 7004 Minnesota, Second Floor, St. Louis, Missouri, with an EPA-approved lead hazard information pamphlet before lessee was obligated under contract to lease the target housing unit.

14. Respondent's failure to perform the acts indicated in paragraph 13 above is a violation of 40 C.F.R. § 745.107(a)(1), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act and Section 409 of TSCA, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count II

15. The facts stated in Paragraphs 1 through 9 above are herein incorporated.

16. Respondent entered into a contract to lease the target housing unit located at 7002 Michigan, Second Floor, St. Louis, Missouri on or about April 3, 2010.

17. Respondent failed to provide the lessee of 7002 Michigan, Second Floor, St. Louis, Missouri, with an EPA-approved lead hazard information pamphlet before lessee was obligated under contract to lease the target housing unit.

18. Respondent's failure to perform the acts indicated in paragraph 17 above is a violation of 40 C.F.R. § 745.107(a)(1), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act and Section 409 of TSCA, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
2. Respondent neither admits nor denies the factual allegations set forth above.
3. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.
4. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
5. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.
6. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Four Thousand Five Hundred Dollars (\$4,500.00), plus applicable interest, to be paid in installments in accordance with the schedule and terms provided in Attachment A to this CAFO.
7. Respondent understands that failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge will be imposed after thirty (30) days and an additional charge for each subsequent thirty (30) day period will be assessed. Additionally, as

provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

FINAL ORDER

Pursuant to the provisions of TSCA, 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Four Thousand Five Hundred Dollars (\$4,500.00), plus applicable interest, to be paid in installments in accordance with the schedule and terms provided in Attachment A to this CAFO. Payments 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:

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

2. 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
901 North 5th Street
Kansas City, Kansas 66101; and

Robert W. Richards, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. The effective date of this Order shall be the date on which it is signed by the Regional
Judicial Officer.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees
incurred as a result of this matter.

RESPONDENT:
FAIRWAYS, LLC

Date 11/4/10

By: Fairways LLC

[Handwritten Signature]
Print Name/Title

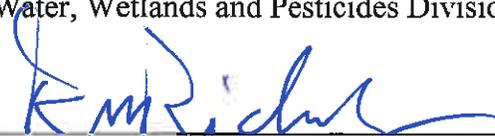
COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/21/11

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

Date: 1/19/11

By 
Robert W. Richards
Assistant Regional Counsel
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Jan 28, 2011 

ROBERT L. PATRICK
Regional Judicial Officer

ATTACHMENT A

Schedule

<u>Payment Due Date</u>	<u>Amount</u>
30 days after effective date of Consent Agreement and Final Order	\$500.00 (no interest)
April 30, 2011	\$500.00 plus interest
July 31, 2011	\$500.00 plus interest
October 31, 2011	\$500.00 plus interest
January 31, 2012	\$500.00 plus interest
April 30, 2012	\$500.00 plus interest
July 31, 2012	\$500.00 plus interest
October 31, 2012	\$500.00 plus interest
January 31, 2013	\$500.00 plus interest

Terms

Interest will be set at the effective rate for debts to the United States as of the effective date of the Consent Agreement and Final Order (CAFO). For the calendar year 2010, the rate is 1% per annum. Thirty (30) days after the effective date of the CAFO, interest shall begin to accrue on the remaining penalty balance. Interest will not be compounded and interest will be calculated based on a 360-day year. For payments that include interest, EPA will mail billing statements to the Respondent thirty (30) days prior to the due date for each payment. Failure by EPA to timely mail billing statements will not excuse payment of the non-interest component when due, but any interest not paid will be temporarily excused and billed in the next billing cycle. At any time, Respondent may make advance payment of the remaining penalty balance and interest due, after obtaining a payoff figure and date from EPA. Unless excused, failure to timely pay any portion of the mitigated civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest, as stated in Paragraph 7 of the Consent Agreement. In computing time, if a due date falls on a Saturday, Sunday, or Federal Holiday, the due date shall be the next day that is not a Saturday, Sunday, or Federal Holiday.

IN THE MATTER OF City of Fairways, Respondent
Docket No. TSCA-07-2011-0005

CERTIFICATE OF SERVICE

I certify 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 hand delivered to
Attorney for Complainant:

Robert W. Richards
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Louis Shaw Jr.
5757 Greenton Way
St. Louis, Missouri 63128

Dated: 1/28/11



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7