

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED

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U.S. EPA REGION 8
HEARING CLERK

IN THE MATTER OF:	
Clooten Property Management, Inc.,	CONSENT AGREEMENT
Respondent	Docket No. TSCA-08-2025-0008

Complainant, the authorized representative of the United States Environmental Protection Agency, and Respondent, Clooten Property Management, Inc., (collectively the Parties), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Consent Agreement is entered into by the EPA, by its duly delegated officials, and by Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. part 745.

II. STATUTORY AND REGULATORY BACKGROUND

3. Pursuant to section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, also known as Title X of the Housing and Community Development Act of 1992, the EPA promulgated regulations at 40 C.F.R. part 745, subpart F (40 C.F.R. §§ 745.100-119) pertaining to the leasing of “target housing.” Pursuant to Title X, it is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with a provision of Title X or any rule or order issued under Title X.
4. The regulations set forth at 40 C.F.R. part 745, subpart F, impose certain requirements on the lease of target housing. Generally, among other obligations under this subpart, a lessor of target housing shall disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the lessee with a lead hazard information

pamphlet; and attach specific disclosure and warning language to the leasing contract before the lessee is obligated under a contract to lease target housing.

5. "Target housing" means any housing constructed prior to 1978, except for housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing). 42 U.S.C. § 4851b.
6. "Residential dwelling" means a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons. 42 U.S.C. § 4851b; 40 C.F.R. § 745.103.
7. "Lessor" means 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. 40 C.F.R. § 745.103.
8. "Lessee" means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporation, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.
9. "Lead-based paint free housing" means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. 40 C.F.R. § 745.103.
10. Pursuant to 40 C.F.R. § 745.107(a), before the lessee is obligated under any contract to lease target housing that is not otherwise an exempt transaction pursuant to 40 C.F.R. § 745.101, lessors shall complete the activities set forth in 40 C.F.R. § 745.107.
11. Pursuant to 40 C.F.R. § 745.107(a)(1), the lessor shall provide the lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA#747-L-94-001) or an equivalent pamphlet that has been approved for use in that State by the

EPA.

12. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish): a Lead Warning Statement with the following language: "Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention."
13. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment or within the contract, in the language of the contract: a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
14. Persons who violate 40 C.F.R. part 745 are subject to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and the inflationary adjustments to those civil penalties at 40 C.F.R. part 19.

III. RESPONDENT

15. Respondent is a company doing business in the state of North Dakota.
16. Respondent is a "person" for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689, and as defined at 40 C.F.R. § 745.83.
17. Respondent is and was at all times relevant to this Consent Agreement, a "lessor" that offered contracts to lease a "residential dwelling" that is "target housing" as those terms are defined at 40 C.F.R. § 745.103.

IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

18. On or about June 5, 2024, the EPA issued a subpoena requesting information to assess Respondent's compliance with the requirements of 40 C.F.R. part 745, subpart F.
19. On or about September 30, 2024, Respondent submitted a response to the subpoena.
20. Based on the information provided to the EPA, Respondent entered into contracts to lease the residential dwellings at the addresses and on the dates listed below:
 - a. 1718 E Boulevard in Bismarck, North Dakota, signed on June 20, 2024;
 - b. 806 N 15th Street in Bismarck, North Dakota, signed on August 2, 2023;
 - c. 1603 E Bowen Avenue in Bismarck, North Dakota, signed on February 28, 2023;
 - d. 342 E Central Avenue in Bismarck, North Dakota, signed on May 20, 2022;
 - e. 1908 N 14th Street in Bismarck, North Dakota, signed on March 8, 2022;
 - f. 108 Seminole Avenue in Bismarck, North Dakota, signed on May 17, 2023;
 - g. 1300 N 4th Street in Bismarck, North Dakota, signed on November 1, 2022;
 - h. 817 N 6th Street in Bismarck, North Dakota, signed on June 30, 2022;
 - i. 1832 N Kavaney Drive in Bismarck, North Dakota, signed on December 29, 2023; and
 - j. 1001 N 14th Street in Bismarck, North Dakota, signed on June 13, 2023
21. The residential dwellings referenced in paragraph 20, above, were constructed prior to 1978.
22. The residential dwellings referenced in paragraph 20 above, are target housing as that term is defined in 42 U.S.C. § 4851b.
23. For the leases referenced in paragraph 20, above, Respondent failed to provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1).
24. Respondent's failure to provide the lead hazard information pamphlet before the purchaser or lessee is obligated under any contract to purchase or lease target housing, as described in paragraph 23, above, constitutes 10 violations of section 409 of TSCA, 15 U.S.C. § 2689.
25. For the lease referenced in paragraph 20, above, Respondent failed to include, as an

attachment or within the contract to lease target housing,

- a. the Lead Warning Statement as required by 40 C.F.R. § 745.113(b)(1); and
- b. a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.113(b)(2).

26. Respondent's failure to include, as an attachment or within the contract to lease target housing, the Lead Warning Statement and the disclosure of lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as described in paragraph 25, above, constitutes 20 violations of section 409 of TSCA, 15 U.S.C. § 2689.

V. SETTLEMENT

27. The Parties agree that settlement of this matter is in the public interest, and the Parties agree that execution of this Consent Agreement and issuance of a final order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
28. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615(a).
29. By signing this Consent Agreement, Respondent: (a) acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; (b) admits the jurisdictional allegations made herein; (c) neither admits nor denies the factual allegations contained herein; and (d) consents to the assessment of the penalty specified in this Consent Agreement.
30. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of \$11,300 (Assessed Penalty) is appropriate to settle this matter.
31. Respondent agrees to pay a civil penalty in the amount of \$11,300, in two

installments, in order to complete the payment of the entire Assessed Penalty and interest, which is assessed at the seven percent Internal Revenue Service underpayment rate. The total amount that will be paid upon completion of all payments will be \$11,497.75.

- a. The first payment of \$5,650.00 is due within 30 calendar days of the date of the Final Order approving this Agreement.
- b. The second and final payment of \$5,847.75 is due within six months of the date of the Final Order approving this Agreement. This amount reflects \$197.75 in interest.
- c. Respondent shall make payments in accordance with the following schedule:

Payment Number	Payment shall be made <i>no later than</i>	Principal Amount	Interest Amount	Total Payment Amount
1	30 days after the Final Order.	\$5,650.00	N/A	\$5,650.00
2	6 months after the Final Order.	\$5,650.00	\$197.75	\$5,847.75

- d. Notwithstanding Respondent's agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondent may pay the entire Assessed Penalty of \$11,300 within 30 days of the filing date of the Final Order and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment
- e. If the due date for payment falls on a weekend or federal holiday, then the due date is the next business day. Payment must be received by 11:59 P.M. Eastern Time to be considered received that day.
- f. Payment of the penalty must be completed using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

[https://www.epa.gov/financial/additional-instructions-making-payments-epa.](https://www.epa.gov/financial/additional-instructions-making-payments-epa)

However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 Executive Order on Modernizing Payments To and From America's Bank Account, Respondent shall pay using one of the electronic payments methods listed on EPA's How to Make a Payment website and will not pay with a paper check.

- g. The payment must reference the docket number that appears on the Final Order as directed when prompted for a document number via an electronic payment method.

- 32. At the time of payment, proof of payment, including proof of the date payment was made, shall be sent electronically to:

Britta Copt
Enforcement Officer
copt.britta@epa.gov

and

Regional Hearing Clerk
R8_Hearing_Clerk@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.

- 33. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

- 34. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to

satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and

- d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

- 35. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

VI. GENERAL PROVISIONS

- 36. The Parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.
- 37. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon the Parties, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement.
- 38. In accordance with 40 C.F.R. 22.18(c), this Consent Agreement, upon incorporation into a final order and full satisfaction by both Parties, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
- 39. This Consent Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Consent Agreement is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
 - a. claims based on a failure by Respondent to meet a requirement of this Consent Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
 - b. claims based on criminal liability; and,
 - c. claims based on any other violations of the Act or federal or state law.

40. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
41. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
42. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.
43. Each party to this action shall bear its own costs and attorney fees, if any.
44. The Parties agree that this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on the parties individually as fully and completely as if the Parties had signed one single instrument, so that the rights and liabilities of the Parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement and any signature page may be transmitted electronically (e.g., a PDF file).
45. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of the Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
46. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.
47. The parties consent to service of the Final Order approving this Consent Agreement by e-mail at the following valid e-mail addresses: Laurianne Jackson, jackson.laurianne@epa.gov (for Complainant), and Jesse Clouten, jesse@cloutenproperty.com (for Respondent).

The foregoing Consent Agreement In the Matter of Clooten Property Management, Inc., is hereby stipulated, agreed, and approved for entry.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

Date: _____

By: _____
David Cobb, Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance
Assurance Division

Complainant.

CLOOTEN PROPERTY MANAGEMENT, INC.

Respondent.

Date: 9-17-25

By:  _____

Printed Name: Jesse Clooten

Title: CEO