



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

March 3, 2008

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 0047

Mr. Harry R. Kleinhans, Sr.
402 North State Street
Merrill, Wisconsin 54452

TSCA-05-2008-0005

Consent Agreement and Final Order, Docket No. _____

Dear Mr. Kleinhaus:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on March 3, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$300.00 is to be paid in the manner prescribed in paragraphs 32 and 33. Please be certain that the number BD 2750847K004 and the docket number are written on both the transmittal letter and on the face of the check. Payment is due by April 2, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Joana Bezerra".

Joana Bezerra
Pesticides and Toxics Compliance Section

Enclosures

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agree to comply with the terms of the CAFO.

Statutory and Regulatory Requirements

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

8. Under 42 U.S.C. § 4852d, 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).

9. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

10. 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.

11. 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.

12. 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.

13. 40 C.F.R. § 745.113(b)(1) of the Disclosure Rule requires the lessor to include, as an attachment to or within the contract, a lead warning statement before a lessee is obligated under the contract to lease target housing.

14. 40 C.F.R. § 745.113(b)(2) requires the lessor to include, as an attachment to or within 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.

15. 40 C.F.R. § 745.113(b)(3) requires the lessor to include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that has been provided to the lessee. If no such records or reports are available, the lessor must so indicate.

16. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, as an attachment to or within the 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 before a lessee is obligated under the contract to lease target housing.

17. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, as an attachment to or within the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before a lessee is obligated under the contract to lease target housing.

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

Stipulated Facts

19. From at least August 1, 2004 to November 2005, Respondent owned rental property located at 402 ½ N. State Street, Merrill, Wisconsin 54452 (House).

20. The House and the residential rental unit within the House are “target housing” as defined in 40 C.F.R. § 745.103.

21. During the time period identified in paragraph 19, Respondent entered into a contract with an individual for the lease of a unit in the House.

22. The individual who entered into the contract to lease the residential rental unit within the House described in paragraph 19 above, to pay rent in exchange for occupancy of the residential rental unit was a “lessee” as defined at 40 C.F.R. § 745.103. Respondent was a “lessor” as defined at 40 C.F.R. § 745.103.

23. Respondent stated he was not aware of the Lead Disclosure Rule requirements during a December 2007 telephone conversation with U.S. EPA. Respondent did not provide any Lead Disclosure Rule documentation to the lessee as required by the Lead Disclosure Rule during the time period identified in paragraph 19.

Alleged Violations

24. During the time period referenced in paragraph 19, above, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a lead warning statement before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(1).

25. During the time period referenced in paragraph 19, above, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a statement by the lessor disclosing the presence of known 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, before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R.

§745.113(b)(2).

26. During the time period referenced in paragraph 19, above, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a list of any records or reports available to the lessor that pertain to lead-based paint and/or lead-based paint hazard information or indicate that no such records or reports exist, before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(3).

27. During the time period referenced in paragraph 19, above, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a statement by each lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(4).

28. During the time period referenced in paragraph 19, above, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, the signatures of the lessor and each lessee certifying to the accuracy of their statements and the dates of such signature before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R.

§ 745.113(b)(6).

Penalty Calculation

29. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C. F. R. Part 745 Subpart F, authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409.

This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997. 40 C. F. R. § 19.2 (61 Fed . Reg . 69361 [1996]).

30. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violation alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

31. Based upon Respondent's demonstrated inability to pay and other factors as justice may require, U.S. EPA has agreed to mitigate the proposed penalty of \$27,080 to \$300.00.

32. Respondent shall pay \$300.00 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" and mail the check to the following address:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

33. Respondent shall accompany the payment with a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number. Respondent shall write the case docket number and the BD number on the face of the check. The BD number may be found on the cover letter transmitting this CAFO. Respondent shall send copies of the check and transmittal letter to:

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

Joana Bezerra (LC-8J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Tamara Carnovsky (C-14J)
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

34. This civil penalty is not deductible for Federal tax purposes.

35. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal for failure to pay a part of a debt more than 90 days past due.

Terms of Settlement

37. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

38. Respondent waives his 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 his right to appeal this CAFO.

39. Respondent certifies that, as of the effective date of this CAFO, he is in full

compliance with the requirements of 40 C.F.R. Part 745, Subpart F, and intend to continue to comply fully with 40 C.F.R. Part 745, Subpart F.

40. The parties consent to the terms of this CAFO.

41. This CAFO settles U.S. EPA's claims for civil penalties for violations alleged.

42. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

43. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Paint Hazard Reduction Act and other applicable Federal, state and local laws and regulations.

44. The terms of the CAFO bind the Respondent and his assigns.

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

46. Each party agrees to bear its own costs and fees in this action.

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

48. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5.

**Consent Agreement and Final Order:
Harry R. Kleinhans, Sr.**


Docket No. TSCA-05-2008-0005

Date: 1-22-08

By: 
Harry R. Kleinhans, Sr., Respondent

**United States Environmental Protection Agency
Complainant**

Date: 2/26/08

By: 
Margaret M. Guerriero, Director
Land and Chemicals Division

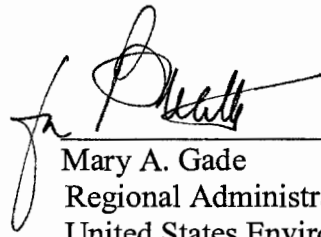
**In the Matter of:
Harry R. Kleinhans Sr.**

Docket No. TSCA-05-2008-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 2-28-08



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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REGIONAL HEARING CLERK
US EPA REGION V
2008 MAR - 3 PM 2: 58


CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Harry R. Kleinhans, Sr., with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8933 0047, a copy of the original to the Respondent:

Mr. Harry R. Kleinhans, Sr.
402 North State Street
Merrill, Wisconsin 54452

and forwarded intra-Agency copies to:

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



Frederick Brown (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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