



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
AUG 06 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 9954

Mr. and Mrs. Donald Kissel
7121 Newburgh Road
Evansville, Indiana 47715

Consent and Final Order In the Matter of Mr. and Mrs. Donald Kissel
Docket No. TSCA-05-2012-0017

Dear Mr. and Mrs. Kissel:

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 August 6, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$900 is to be paid in the manner described in paragraphs 26 and 27. Please be certain that the number **BD 2751247X018** and the docket number are written on both the transmittal letter and on the check. Payment is due by December 5, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosures

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

RECEIVED

AUG - 6 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION 5 U.S. ENVIRONMENTAL PROTECTION AGENCY

<p>In the Matter of:</p> <p>Donald and Sarah Kissel</p> <p>Evansville, Indiana,</p> <p>Respondents.</p> <hr/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. TSCA-05-2012-0017</p> <p>Proceeding to Assess a Civil</p> <p>Penalty Under Section 16(a) of the</p> <p>Toxic Substances Control Act,</p> <p>15 U.S.C. § 2615(a)</p>
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Consent Agreement and Final Order

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 (EPA), Region 5.

3. The respondents are Donald and Sarah Kissel who are owners of real estate, doing business in the State of Indiana.

4. 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). 40 C.F.R. § 22.13(b).

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 assessment of the civil penalty specified in this CAFO, and to the terms of 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 its 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, requires 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) pursuant to 42 U.S.C. § 4852d.

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. § 745.113(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.

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

16. The Administrator of EPA may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after 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

17. On September 26, 2009, Respondents owned a single family dwelling at 1117 East Columbia Street in Evansville, Indiana (Respondents' property).

18. Respondents' property is "target housing" as defined in 40 C.F.R. § 745.103.

19. On the following date, Respondents entered into the following lease agreement (contract) with individuals for the lease of Respondents' property:

Address	Date of Lease
1117 East Columbia Street	9/26/09

20. The contract referred to in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Respondents are "lessors," as defined in 40 C.F.R. § 745.103, because they offered

the target housing referred to in paragraph 19, above, for lease.

22. The individuals who signed the lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 19, above, became “lessees” as defined in 40 C.F.R. § 745.103.

23. Respondents failed to include an accurate 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, either within the contract or as an attachment to the contract for the lease of Respondents’ property at 1117 East Columbia Street, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. Respondents failed to include either a list of any records or reports available to the lessors regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondents’ property at 1117 East Columbia Street, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

25. 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 \$900. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, any history of such prior violations, the degree of culpability. Complainant also considered EPA’s Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

26. Within 30 days after the effective date of this CAFO, Respondents must pay a \$900

civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," by regular U.S. Postal Service mail to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must state "Donald and Sarah Kissel," the docket number of this CAFO and the billing document number.

27. Respondents must send a notice of payment that states Respondents' names, complete address, the case docket number and the billing document number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Meghan Dunn (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Joseph Williams (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

28. This civil penalty is not deductible for federal tax purposes.

29. If Respondents do not pay timely the civil penalty EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

30. Pursuant to 31 C.F.R. § 901.9, Respondents must pay the following on any amount overdue under this CAFO. 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. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondents must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

32. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

33. 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.

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

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

36. Each person signing this agreement 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.

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

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

Donald and Sarah Kissel, Respondents

6/27/12
Date

Donald Kissel
Donald Kissel

6/27/12
Date

Sarah W Kissel
Sarah Kissel

United States Environmental Protection Agency, Complainant

July 30, 2012
Date

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

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:
Donald and Sarah Kissel
Docket No. TSCA-05-2012-0017

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.

8-2-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 Mr. and Mrs. Donald Kissel, was filed on August 6, 2012, 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, Receipts No.7009 1680 0000 7667 9954 to:

Mr. & Mrs. Donald Kissel
7121 Newburgh Road
Evansville, Indiana 47715

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Joseph Williams, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



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

Docket No. TSCA-05-2012-0017