



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-P

May 26, 2020
1:57 PM

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Received by
EPA Region VIII
Hearing Clerk

Jayhawk Cafe LLC
Registered Agent for: Boulder Mansion LLC
115 E Dale Street
Colorado Springs, CO 80903

Mr. David Zook
Boulder Mansion LLC
2020 N Tejon
Colorado Springs, CO 80907

Re: **SUBPOENA DUCES TECUM** Issued Pursuant to Section 11(c) of the
Toxic Substances Control Act, 15 U.S.C. § 2610(c) TSCA-08-2020-0003

Dear Registered Agent, Jayhawk Cafe LLC, and Mr. Zook:

The U.S. Environmental Protection Agency, Region 8 is hereby serving the enclosed Subpoena Duces Tecum (Subpoena) on Boulder Mansion LLC (Respondent or you) because of your failure to respond to EPA's information request letter dated December 9, 2019. The EPA is investigating whether Respondent has complied with the Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property rule, codified at 40 C.F.R. part 745, subpart F (Disclosure Rule), in connection with the lease or sale of any property in which Respondent has any ownership or management interest (e.g., as an agent). The EPA promulgated the Disclosure Rule to implement the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-4856. Under section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, it is unlawful for any person to fail or refuse to comply with the Disclosure Rule. 42 U.S.C. § 4852d(b)(5).

Section 11(c) of TSCA, 15 U.S.C. § 2610(c), authorizes the EPA Administrator to require that witnesses answer questions and provide reports, papers, documents, and other information to carry out the purposes of TSCA. The Subpoena requires you to send all information and copies of supporting documents requested in Attachment A by first class mail and email within 30 days of receipt of the Subpoena.


We have enclosed an EPA information sheet entitled U.S. EPA Small Business Resources which may be helpful if Respondent qualifies as a small business.

The EPA acknowledges that the COVID-19 pandemic may be impacting your business. If that is the case, please contact this office so we can consider your specific circumstances including any request for additional time to respond to this request.

If you have any questions concerning this Subpoena, please contact Jessica Portmess, Senior Assistant Regional Counsel, at (303) 312-7026 or Portmess.Jessica@epa.gov.

Sincerely,

**DAVID
COBB**

 Digitally signed by
DAVID COBB
Date: 2020.05.26
12:54:39 -06'00'

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

Enclosures

ecc: David Zook

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

May 26, 2020
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Docket No. TSCA-08-2020-0003

Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF:

**Boulder Mansion LLC
806 East Boulder Street
Colorado Springs, CO 80903**

Respondent.

SUBPOENA DUCES TECUM

TO: David Zook
Boulder Mansion LLC
806 East Boulder Street
Colorado Springs, CO 80903

Jayhawk Cafe LLC
Registered Agent for: Boulder Mansion LLC
115 E Dale Street
Colorado Springs, CO 80903

Boulder Mansion LLC **IS HEREBY COMMANDED**, pursuant to Section 11(c) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2610(c), to submit all information and copies of documents requested in Attachment A to this Subpoena within 30 days of receipt of this Subpoena. Required information and documents must be mailed first class and sent via email to:

PLACE: Britta Copt
Toxics and Pesticides Enforcement Section (8ENF-AT-P)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202
copt.britta@epa.gov

SPECIFICALLY, YOU MUST:

1. Review Attachment A and the declaration attached to this Subpoena. The instructions, definitions, information and document requests, and declaration are an integral component of the Subpoena which you must follow to comply with the Subpoena.
2. Provide a clear and complete narrative response to each item in Attachment A that calls for a narrative response. You may supplement your narrative response with documents.
3. Include true, complete, and accurate copies of ALL documents requested in Attachment A as specified in the instructions. If you claim that any document, or part of the document, requested by this Subpoena is confidential business information, you still must provide that document.
4. Include the attached declaration. Please read the declaration carefully and be sure that you understand it before you sign and swear to it.

5. Send your response by first class mail and email within 30 days of your receipt of this Subpoena. If it is absolutely necessary to request an extension of time to respond, you must immediately contact Jessica Portmess, Senior Assistant Regional Counsel, at (303) 312-7026 or Portmess.Jessica@epa.gov.

You may assert a business confidentiality claim under 40 C.F.R. part 2, subpart B for any part of the information you submit. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. part 2, subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice. Any business confidentiality claim must conform to the requirements at 40 C.F.R. § 2.203(b).

EPA may use the information you provide in response to this Subpoena in an administrative, civil, or criminal action.

This Subpoena is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501, *et seq.*, because it seeks the collection of information from specific individuals or entities as part of an administrative action or investigation.

Under Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. Part 19, EPA is authorized to seek civil penalties of up to \$40,576 per day against Boulder Mansion LLC for failing or refusing to submit the information required by the Subpoena. Further, under 18 U.S.C. § 1001, you may be fined or imprisoned for up to five years for knowingly or willfully: (1) falsifying, concealing, or covering up a material fact; (2) making any material false, fictitious, fraudulent statement or representation; or (3) making or using any false writing or document knowing it contains any materially false, fictitious, or fraudulent statement.

FAILURE TO FULLY COMPLY WITH THIS SUBPOENA MAY RESULT IN A COURT ACTION AGAINST YOU.

Issued on May 26, 2020

Digitally signed by DAVID
COBB
Date: 2020.05.26 13:48:54
-06'00'

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

ATTACHMENT A

I. Instructions

1. You must number each of your responses so that the number of the response corresponds with the number of the item in Part III of this Attachment.
2. For each document you submit, clearly and precisely identify its title, author, date of preparation, and subject matter. You must number each document to correspond with the number of the item requesting the document in Part III of this Attachment. For example, if you are submitting a document in response to Item No. 2, the document should be marked "Response to Item No. 2."
3. Upon receipt of this Subpoena, you and your affiliates and agents must retain all documents, including electronically stored information, requested by this Subpoena. Destruction of any such records constitutes a failure to comply with this Subpoena and may result in a court action against Respondent. This requirement is in addition to any other record retention requirement in the Disclosure Rule.
4. This Subpoena covers all information, documents, and records described in Part III of this Attachment that are in your possession or control, or in the possession or control of your current or former employees, agents, contractors, accountants, or attorneys. You must provide the information whether or not it is based on your personal knowledge and regardless of the source. The requested information includes information relevant to oral as well as written contracts for the lease, rental, or sale of residential real estate. Where information necessary for a complete response is not in your possession, state this fact in your response and, if possible, identify any source that either has or is likely to have such information.
5. In answering each item, identify all persons by name, title, and telephone number, who contributed information and documents. If any information sought by this Subpoena is not contained in a document, you must identify for each piece of information, the person(s) who provided the information, the basis for each person's knowledge, the position occupied by the person providing the response, and the person's address and supervisor's name.
6. You must provide the following information regarding each document which was, but is no longer, in your possession, custody, or control:
 - a. The disposition of the document;
 - b. The date such disposition was made;
 - c. The present custodian of the document and the custodian's address, or, if the document no longer exists, so state;
 - d. The person who made the decision regarding the disposition of the document;
 - e. The reason for the disposition; and

- f. A description of the document and its contents, including the title, date, and author.

II. Definitions

Please read these definitions carefully to properly comply with the terms of this Subpoena.

Unless otherwise defined below, the terms used in this Subpoena have the meanings given in Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 C.F.R. part 745, subpart F.

1. “Agent” and “broker” mean any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing housing constructed prior to 1978. This term does not apply to the purchaser or any purchaser’s agent who receives all compensation from the purchaser.
2. “Buyer” or “purchaser” means any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
3. “Document” means the original or an identical and readable copy thereof, and all non-identical copies (whether different from the original by reason of notations made on such copies or otherwise), of any writings or records of any type or description, however created, produced or reproduced, including but not limited to any final contracts, contingency contracts, riders, agreements, papers, books, records, letters, photographs, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, conferences, or other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, charts, manuals, blueprints, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing program libraries, data processing input and output, microfilm, books of accounts, records and invoices reflecting business operations, all records kept by electronic, photographic or mechanical means, any notes or drafts related to the foregoing, and all things similar to any of the foregoing, however denominated.
4. “Identify” means, with respect to a person, providing the person’s full name, current or last known personal address, current or last known business address, and current or last known telephone number.
5. “Lead-based paint” means paint or other surface coatings which contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.
6. “Lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorating or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.

7. “Lessee” means any entity that enters into an agreement to lease, rent, or sublease an apartment, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
8. “Lessor” means any entity that offers apartments for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
9. “Property” and “properties” include all single-family dwellings and all individual dwelling units in a structure that contains more than one separate dwelling unit that you own or manage.
10. “Risk assessment” means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: information gathering regarding the age and history of the housing and occupancy by children under age six; visual inspection; limited wipe sampling or other environmental sampling techniques; other activity as may be appropriate; and any report explaining the results of the investigation.
11. “Seller” means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term “seller” also includes any entity that transfers shares in a cooperatively owned project, in return for consideration; and an entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.
12. “Target housing” means 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.
13. “You” or “Respondent” means Boulder Mansion LLC and all business entities in which Boulder Mansion LLC has or had any ownership or management interest, and any officers, managers, employees, contractors, partners, trustees, assigns, subsidiaries, and agents of Boulder Mansion LLC or of such business entities.

III. Information and Documents You Are Required to Submit to EPA

The information that this Subpoena requires you to submit covers all residential rental agreements and leases, rental transactions, and sales transactions where you had an ownership, financial, or managerial interest.

1. Please provide a list of all the residential real properties that you have owned, sold or leased or for which you have acted as an agent for a seller or lessor, from May 1, 2017 to present. For each property you must providing the following information:
 - a. The address and year of construction;
 - b. The number and type of dwelling units for each property (e.g. three-bedroom

single family house built in 1958 or twelve-unit apartment building built in 1929 with eight one-bedroom units and four studio apartments);

- c. Whether you have an ownership interest either directly or indirectly and whether you manage the property. State the type of interest you have (i.e., partnership, joint tenant, shareholder in corporation). Identify all other parties having an ownership or managerial interest (e.g., as an agent) by providing the full name, address, and phone number of each party and state whether each party has an ownership or managerial interest.
 - d. If you no longer own or manage the property, state whether you either sold or ceased managing the property. Provide all documents pertaining to a change in the management or sale of the property.
2. For each property in your response to Item No. 1, **except the property at 806 E. Boulder Street, Colorado Springs, Colorado**, please provide the following for 10% of the transactions (sales or leases) for target housing that you have been a party to from May 1, 2017 to present:
 - a. Leases or rental agreements, including all attachments;
 - b. Renewals of leases or rental agreements, including any changes to lease terms;
 - c. Lease applications;
 - d. Documents pertaining to the disclosure of lead-based paint or lead-based paint hazards.
3. **For the rental property at 806 E. Boulder Street, Colorado Springs, Colorado**, provide the information listed in Item No. 2a–d, above, for all transactions (sales or leases) for target housing that you have been a party to from May 1, 2017 to present.
4. For each transaction provided in Item Nos. 2 and 3, above, please provide the following information:
 - a. Number of occupants in each of the following age groups: under 6 years, 6–18 years, over 18 years;
 - b. Whether any of the occupants included pregnant women;
 - c. Whether any occupants were receiving rental assistance (e.g. voucher).
5. For any property for which you are unable to provide leasing documentation as requested in Item Nos. 2 and 3, above, explain the reason why such documents do not exist or are unavailable.
6. For each property identified in your response to Item No. 1, above, provide copies of all documents relating to the sale of target housing from May 1, 2017 to present, including but not limited to:

- a. All sales contracts or sales agreements, including all attachments;
 - b. All buyer's offers to purchase any properties;
 - c. All documents pertaining to the disclosure of lead-based paint or lead-based paint hazards; and
 - d. All other documents that may have information regarding the name(s) or ages of buyers or persons living with buyers.
7. For each property identified in your response to Item No. 1, above, provide all available information relating to the presence or absence of lead-based paint, or lead-based paint hazards, including but not limited to:
- a. All reports and inspections pertaining to the presence of lead-based paint or lead-based paint hazards; and
 - b. All documents pertaining to the abatement of lead-based paint or lead-based paint hazards, including but not limited to, inspections conducted by representatives of any state, county, or city, including each city's Department of Health; mitigation plans; orders of abatement; certificates of completion; and notices concerning lead.
8. For each property identified in your response to Item No. 1, above, state whether it contained or contains lead-based paint or lead-based paint hazards that were known to you before the properties were leased, rented, or sold. In addition, state the date(s) on which you became aware of such lead-based paint or lead-based paint hazards and the basis for such knowledge.
9. Provide all documents that support your responses to Item Nos. 1–8, above.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No.

IN THE MATTER OF:)	
)	
Boulder Mansion LLC)	
806 East Boulder Street)	SUBPOENA DUCES TECUM
Colorado Springs, CO 80903)	
)	
Respondent.)	
)	

Declaration Responding to Subpoena

1. I have made a diligent search and inquiry for all information and documents that are requested in the Subpoena to which this declaration responds. I have not found or been told about, and have no knowledge of, any information or documents requested by the Subpoena that I have not identified, copied, and submitted along with this declaration. I have not destroyed any requested documents or transferred any requested documents to any other person or party in the last three years.
2. Attached to this declaration are _____ pages of document photocopies. The attached pages are true, complete, and correct copies of documents that I presently have in my custody or control either personally, or as an agent, representative, or employee of a business entity in which I had or have a financial or ownership interest.
3. The information and documents were prepared and kept, or were received and kept, in the usual course of regularly conducted business.
4. All responses to the inquiries contained in the aforementioned information request are true, complete, and accurate.
5. I acknowledge that any material false statement of fact herein may be a federal crime under 18 U.S.C. § 1001.

Signature

Date

Office or Title

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Subpoena Duces Tecum to Boulder Mansion LLC was served as follows:

Sent via CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to:

Jayhawk Cafe LLC
Registered Agent for: Boulder Mansion LLC
115 E Dale Street
Colorado Springs, CO 80903

Mr. David Zook
Boulder Mansion LLC
2020 N Tejon
Colorado Springs, CO 80907

Date: May 27, 2020

By: Ellen Wells
Ellen Wells
Legal Assistant, Legal Enforcement Branch
Office of Regional Counsel