

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

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U.S. DISTRICT COURT
NEW HAVEN, CT

UNITED STATES OF AMERICA,)
)
 Petitioner)
)
 v.)
)
 DOUGLAS PAULINO,)
)
 Respondent.)

CIVIL ACTION NO.

308CV00761 JBA

PETITION TO ENFORCE A TOXIC SUBSTANCES CONTROL ACT SUBPOENA

The United States of America, by Nora R. Dannehy, Acting United States Attorney for the District of Connecticut, petitions this court for an order directing Respondent, Douglas Paulino, to produce written responses and documents as set forth in the Toxic Substances Control Act subpoena duces tecum served upon Respondent. In support, Petitioner alleges as follows:

I. Jurisdiction and Venue

1. This court has subject matter jurisdiction pursuant to Section 11(c) of the Toxic Substances Control Act of 1976, as amended ("TSCA"), 15 U.S.C. § 2610(c), and 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b).

II. Parties

3. Petitioner is the United States of America on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), an agency of the United States of

America.

4. Upon information and belief, Respondent, Douglas Paulino, has a business address at 9 Orange Street, Hartford, Connecticut.

5. Upon information and belief, Douglas Paulino owns, or has owned, approximately six buildings within the State of Connecticut comprising approximately 12 to 15 residential dwelling units (apartments and single family homes).

6. Upon information and belief, most or all of the buildings owned or previously owned by Douglas Paulino are located in Hartford, Connecticut.

7. Upon information and belief, most or all of the buildings owned or previously owned by Douglas Paulino were constructed prior to 1978.

III. Legal Basis

8. U.S. EPA is charged in Section 11 of TSCA, 15 U.S.C. § 2610, with administering TSCA, 15 U.S.C. §§ 2601 et seq.

9. U.S. EPA is authorized to issue administrative subpoenas for the purpose of administering TSCA, pursuant to Section 11(c) of TSCA, 15 U.S.C. § 2610(c), which provides in relevant part that:

In carrying out this chapter, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. . . .

10. Among the TSCA provisions U.S. EPA is charged with carrying out are the civil and criminal enforcement provisions contained in Section 16, 15 U.S.C. § 2615. As they relate to the instant proceedings, those provisions make it unlawful for anyone to violate Subchapter IV of

TSCA [Lead Exposure Reduction], 15 U.S.C. §§ 2681 - 2692.

11. Failure or refusal to comply with Subchapter I of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, is a prohibited act under Section 409 of TSCA Title IV, 15 U.S.C. § 2689.

12. Failure to comply with the Real Estate Notification and Disclosure Rule (“Lead Disclosure Rule”), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and is codified at 40 C.F.R. Part 745, Subpart F, is also a prohibited act under 15 U.S.C. § 2689. The Lead Disclosure Rule requires, *inter alia*, the disclosure of known information on lead-based paint and/or lead-based paint hazards before the sale or lease of most housing built before 1978.

13. Likewise, failure to comply with the Pre-Renovation Education Rule (“Pre-Renovation Rule”), which was promulgated pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), and is codified at 40 C.F.R. Part 745, Subpart E, is also a prohibited act of 15 U.S.C. § 2689. The Pre-Renovation Rule requires, *inter alia*, that persons who perform for compensation a renovation of most housing built before 1978 must provide a lead hazard information pamphlet to the occupants of such housing prior to commencing the renovation.

IV. Factual Allegations

14. On August 23, 2006, EPA received a tip and complaint from the City of Hartford Department of Health and Human Services indicating that at least three children residing in Douglas Paulino’s properties had confirmed elevated blood lead levels. Accordingly, the New England office of the U.S. EPA targeted Douglas Paulino for a TSCA compliance inspection.

The purpose of the inspection would have been to assess Douglas Paulino's compliance with the Lead Disclosure and Pre-Renovation Rules through a review of records such as, among others, residential lease transactions, purchase and sales documents, reports and records pertaining to lead-based paint, lead-based paint disclosure forms, and work orders regarding repairs and renovation work.

15. On or about April 5, 2007, Alma Padilla, a grantee in EPA's Senior Environmental Employment ("SEE") Program, telephoned Douglas Paulino requesting to schedule an EPA inspection on April 13, 2007. Ms. Padilla explained the purpose of the compliance inspection and what documents EPA requested to see. After Ms. Padilla finished her explanation, Mr. Paulino asked that Ms. Padilla telephone his wife, Laura, and explain everything to her because he claimed that he was not proficient in English. Ms. Padilla left a message with Laura Paulino requesting her to call EPA back.

16. On or about April 6, 2007, EPA SEE Grantee Alma Padilla telephoned Laura Paulino again, explaining the purpose of the inspection, and left another message for her to return the call. She never returned the calls.

17. On or about May 10, 2007, EPA Environmental Scientist, Ronnie Levin, sent a Notice of Inspection to Douglas Paulino at 45 Colonial St., Hartford, Connecticut, his last known address, by certified mail, return receipt requested. The letter came back to EPA, "Unclaimed, Unable to Forward."

18. On or about May 16, 2007, Ms. Padilla called Douglas Paulino to confirm the inspection date scheduled on May 18, 2007. Douglas Paulino repeatedly insisted that he did not

know what this was all about, despite previous explanations. Douglas Paulino hung up in the middle of one such explanation. Ms. Padilla called right back and left a message that inspection refusal would result in EPA serving him a subpoena.

19. On or about May 18, 2007, EPA inspectors Levin and Padilla went to 45 Colonial Street in Hartford to meet with Douglas Paulino. There was no response when the inspectors rang the doorbell several times.

20. EPA was not successful in its attempts to schedule a consensual inspection to assess Douglas Paulino's compliance with the Lead Disclosure and Pre-Renovation Rules under TSCA.

21. On June 20, 2007, EPA issued TSCA subpoena number TSCA-SP-2007-012 (the "Subpoena") to Douglas Paulino for the purpose of assessing his compliance with TSCA. EPA issued the Subpoena pursuant to its authority in 15 U.S.C. § 2610(c). The Subpoena was served to Douglas Paulino at 45 Colonial Drive, Hartford, CT, by certified mail, return receipt requested. The Subpoena sought information about Douglas Paulino's compliance with the Lead Disclosure and Pre-Renovation Rules from May 1, 2005 through May 1, 2007. A true and accurate copy of the Subpoena is attached hereto as Exhibit 1. The Subpoena was returned to EPA indicating the addressee had moved.

22. On July 3, 2007, EPA issued a copy of the Subpoena to Douglas Paulino at 9 Orange Street, Hartford, by certified mail, return receipt requested. A true and accurate copy of the Subpoena is attached hereto as Exhibit 2. Again, the Subpoena was returned to EPA unopened.

23. In the afternoon of August 9, 2007, EPA Investigator, James Israel, handed the

Subpoena to Douglas Paulino at 9 Orange Street, Hartford, Connecticut, in person. A true and accurate copy of the cover letter from Sharon Hayes, Senior Enforcement Coordinator, and the Subpoena dated August 9, 2007, are attached hereto as Exhibit 3.

24. A true and accurate copy of an August 10, 2007 memorandum written by James Israel, EPA Investigator, to attest to his hand delivery of the Subpoena, is attached hereto as Exhibit 4.

25. As of November 1, 2007, there had been no response from Douglas Paulino. On November 2, 2007, EPA issued a letter to Douglas Paulino, entitled *Notice of Noncompliance and Potential for Further Enforcement - TSCA Subpoena No. TSCA-SP-2007-012* ("Notice"). The Notice, signed by Nancy Barmakian, Manager of Toxics and Pesticides Enforcement Unit at EPA New England, provided Douglas Paulino with notice that his continued failure to respond to the Subpoena could result in further enforcement to compel a response. The letter was delivered by hand. A true and accurate copy of the Notice is attached hereto as Exhibit 5.

26. Upon information and belief, Douglas Paulino received the Notice on November 2, 2007. Attached hereto as Exhibit 6 is a true and accurate copy of a November 5, 2007 memorandum, written by James Israel, EPA Investigator, to attest to his hand delivery of the Notice.

27. To date, U.S. EPA has not received a response to either the Subpoena or the Notice of Noncompliance from Douglas Paulino.


28. The documents and information sought pursuant to the Subpoena are relevant and material to the successful completion of U.S. EPA's investigation of Douglas Paulino because

such information will allow U.S. EPA to evaluate whether violations of TSCA Title IV, the Lead Disclosure or Pre-Renovation Rules, and/or other applicable laws and regulations have occurred.

WHEREFORE, Petitioner requests this court to order Douglas Paulino to produce all information, documents and materials described in the Subpoena, before a duly authorized designee of Petitioner at a time, date and place specified by the court.

Respectfully submitted,

NORA R. DANNEHY
ACTING UNITED STATES ATTORNEY



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CERTIFICATE OF SERVICE


I hereby certify that the foregoing (1) Order to Show Cause and (2) Petition to Enforce a Toxics Substances Control Act Subpoena have been given to the following person on the date and time, and at the address noted below:

Copy of (1) Order to Show Cause
and (2) Petition
HAND DELIVERED

Douglas Paulino

Address: 9 Orange St.
Hartford, CT.

Date: 06/24/08
Time: 11³² AM


Jim Israel, Civil Investigator
U.S. Environmental Protection Agency,
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