



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

SEP 27 2007

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8382

Bonnie Owen Wright
1122 Jackson Street
Robinsonville, Mississippi 38664

Consent Agreement and Final Order, Docket No. TSCA-05-2007-0020

Dear Ms. Wright:

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 September 27, 2007, with the Regional Hearing Clerk.

The civil penalty in the amount of \$533 is to be paid in the manner prescribed in paragraphs 33, 34 and 35. Please be certain that the number **BD 2750747X019** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 29, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


Joana Bezerra
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Robert S. Guenther, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

STATUTORY AND REGULATORY BACKGROUND

6. 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.

7. 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 (the Disclosure Rule).

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

9. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978.

10. 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.

11. 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.

12. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a lessor for the purpose of leasing target housing to third parties.

13. 40 C.F.R. § 745.107(a)(1) requires a lessor to provide a lessee with a U.S. EPA-approved lead hazard information pamphlet prior to any obligation accruing to a lessee under a contract to lease target housing.

14. 40 C.F.R. § 745.113(b) requires, among other things, that each contract to lease target housing include as an attachment or within the lease contract a lead warning statement as provided in the regulation; a statement by the lessor disclosing the presence of any known lead-

based paint or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints or lead-based paint hazards in the target housing or a statement that no such records exist; 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 required by 15 U.S.C. § 2696; a statement that the agent has informed the lessor of its obligations under the Disclosure Rule and that the agent is aware of her obligation to ensure compliance with the requirements of the Disclosure Rule; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

15. 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, and subjects the violator to civil penalties under section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

ALLEGATIONS OF LIABILITY

GENERAL ALLEGATIONS

16. Bonnie Owen Realty, Inc., is an Illinois corporation that was in a contractual relationship with the owner of the residential rental property at 2103 Sunset Court, Carbondale, Illinois, during the period from June 2002 through July 2003 to lease that property to third parties.

17. During the period of June 2002 through June 2003, Respondent managed the leasing of a house employed as residential rental property at 2103 Sunset Court, Carbondale, Illinois.

18. Respondent is an “agent,” as that term is defined at 40 C.F.R. § 745.103.

19. The house at 2103 Sunset Court in Carbondale, Illinois, was constructed prior to

1978.

20. The house at 2103 Sunset Court in Carbondale, Illinois, is “target housing,” as that term is defined at 40 C.F.R. § 745.103.

21. The individuals who signed a lease to pay rent in exchange for occupancy of the house at 2103 Sunset Court in Carbondale, Illinois, are “lessees” as defined in 40 C.F.R. § 745.103, because they entered into an agreement to lease target housing.

22. On June 18, 2002, Respondent, on behalf of the owner, who is a “lessor” under 40 C.F.R. § 745.103, entered into a contract to lease the house at 2103 Sunset Court in Carbondale, Illinois, to the lessees for a term of more than 100 days.

23. Complainant has determined that Respondent has violated the federal regulations regarding the disclosure of lead-based paint or lead-based paint hazards, 40 C.F.R. part 745, as described below, and thereby violated section 409 of TSCA, 15 U.S.C. § 2689.

SPECIFIC ALLEGATIONS

24. U.S. EPA alleges that Respondent, as agent for the lessor, failed to provide the lessee of 2103 Sunset Court, Carbondale, Illinois, with a U.S.EPA-approved lead hazard information pamphlet before the lessees were obligated under the lease dated June 18, 2002, as required by 40 C.F.R §§ 745.100 and 745.107(a)(1).

25. U.S. EPA alleges that Respondent, as agent for the lessor, failed to include, either within the contract or as an attachment to the contract to lease the housing at 2103 Sunset Court, Carbondale, Illinois, dated June 18, 2002, a Lead Warning Statement before the lessees of the property were obligated under the lease contract, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(1).

26. U.S. EPA alleges that Respondent, as agent for the lessee, failed to include, either within the contract or as an attachment to the contract to lease the housing at 2103 Sunset Court, Carbondale, Illinois, a statement disclosing either the presence of any known lead-based paint or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessees of the property were obligated under the lease contract dated June 18, 2002, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(2).

27. U.S. EPA alleges that Respondent failed to include, either within the contract or as an attachment to the contract to lease the housing at 2103 Sunset Court, Carbondale, Illinois, a list of any records or reports available to the lessor regarding lead-based paint or lead-based paint hazards in the target housing, or a statement that no such records exist, before the lessees of the property were obligated under the lease contract dated June 18, 2002, as required by 40 C.F.R. §§ 745.110 and 745.113(b)(3).

28. U.S. EPA alleges that Respondent, as agent for the lessor, failed to include, either within the lease or as an attachment to the lease for 2103 Sunset Court, Carbondale, Illinois, dated June 18, 2002, 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 required by 15 U.S.C. § 2696, as required by 40 C.F.R. § 745.113(b)(4).

29. U.S. EPA alleges that Respondent, as agent for the lessor, failed to include, either within the lease or as an attachment to the lease for 2103 Sunset Court, Carbondale, Illinois, dated June 18, 2002, a statement that the agent has informed the lessor of its obligations under the Disclosure Rule and that the agent is aware of her obligation to ensure compliance with the requirements of the Disclosure Rule, as required by 40 C.F.R. § 745.113(b)(5).

30. U.S. EPA alleges that Respondent, as agent for the lessor, failed to include, either within the lease or as an attachment to the lease for 2103 Sunset Court, Carbondale, Illinois, dated June 18, 2002, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures, as required by 40 C.F.R. § 745.113(b)(6).

CIVIL PENALTY

31. 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 Administrator of U.S. EPA to assess a civil penalty under section 16 of TSCA of up to \$10,000 for each violation of TSCA section 409. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997 (62 Fed. Reg. 35038) (1997). In determining the amount of any civil penalty, section 16 of TSCA requires U.S. EPA to take into account the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator, ability to pay, affect 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.

32. In consideration of the factors delineated by TSCA, Respondent's cooperation and other factors as justice may require, including the fact that the residence at 2103 Sunset Court, Carbondale, Illinois, has tested free of lead-based paint since the dates of the alleged violations and Respondent's voluntary undertaking of two projects to replace windows assumed to contain lead-based paint at two additional rental properties in Carbondale, U.S. EPA determined that an appropriate civil penalty to settle this matter is \$533.00.

33. Respondent will pay a \$533.00 civil penalty by cashier's or certified check or postal money order payable to the "*Treasurer, United States of America*," within 30 days after

the effective date of this CAFO.

34. Respondent must send the check to:

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

35. Respondent must enclose with its payment a transmittal letter, stating

Respondent's name, complete address, the case docket number and the billing document (BD) number. Respondent must 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 must send copies of the check and transmittal letter to:

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

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

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

36. 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. According to section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. 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 6 percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

ADDITIONAL SETTLEMENT PROVISIONS

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

39. Respondent waives its 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.

40. Respondent certifies that, as of the effective date of this CAFO, it is in full compliance with the requirements of 40 C.F.R. part 745, subpart F, and intends to continue to comply fully with these provisions.

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

42. This CAFO resolves only Respondent's liability for federal civil penalties for the facts and the violations alleged in this CAFO.

43. Nothing in this CAFO affects the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

45. The terms of the CAFO bind the Respondent and its assigns.

46. 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.

- 47. Each party agrees to bear its own costs and fees in this action.
- 48. This CAFO constitutes the entire agreement between the parties.
- 49. This CAFO will become effective immediately upon filing with the Regional

Hearing Clerk, U.S. EPA, Region 5.

Bonnie Owen Realty, Inc., Respondent

9-9-07
Date

Bonnie Owen, Pres
Bonnie Owen, President

United States Environmental Protection Agency, Complainant

9/21/07
Date

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

TSCA-05-2007-0020

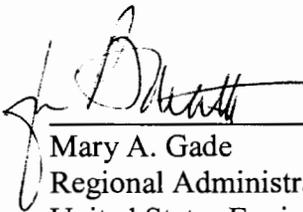
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In the Matter of:
Bonnie Owen Realty, Inc.,
Docket No.: TSCA-05-2007-0020

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-25-07
Date



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

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Bonnie Owen Realty, Inc., was filed on September 27, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 8382, a copy of the original to the Respondents:

Bonnie Owen Wright
1122 Jackson Street
Robinsonville, Mississippi 38664

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Robert S. Guenther, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2007-0020**

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