

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of

**MARTY J. AND ESTELA M. MILLER
Wichita, Kansas**

Respondent

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Docket No. TSCA-07-2011-0016

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Marty J. and Estela M. Miller (Respondents), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 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*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondents are Marty J. and Estela M. Miller, 5342 South Stoneborough, Wichita, Kansas 67217.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Alleged Violations

6. The Complainant hereby states and alleges that Respondents have violated TSCA and federal regulations promulgated thereunder, as follows:

7. Respondents are, and was at all times referred to herein, a "person" within the meaning of TSCA.

8. Respondents are the lessor, as that term is defined by 40 C.F.R. § 745.103, of property located at 927 North Edgemoor Street, Wichita, Kansas 67208.

9. The property referenced above was constructed before 1978; therefore, it is "target housing" as that term is defined by 40 C.F.R. § 745.103.

10. Information collected shows that Respondents entered into a contract to lease the above property on or about March 4, 2010.

11. Information collected shows that Respondents failed to provide the lessee with an EPA-approved lead hazard information pamphlet before lessee was obligated under contract to lease target housing.

12. Respondents' failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

13. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

14. Respondents neither admit nor deny the factual allegations set forth above.

15. Respondents waive their right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

16. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

17. Each signatory of this agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

18. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

19. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a mitigated civil penalty in the amount of One Thousand Dollars (\$1,000) to be paid in two equal payments of Five Hundred Dollars (\$500) each, pursuant to the payment schedule contained in Paragraph 1 of the Final order.

20. Respondents understand that their failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 19, above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondents shall pay a mitigated civil penalty of One Thousand Dollars (\$1,000) to be paid in two equal payments of Five Hundred Dollars (\$500) each. The first payment shall be due within 30 days of the effective date of the Final Order, and the second payment shall be due on or before November 1, 2011. Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charge, penalties, and accumulated interest. All payments shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondents and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENTS
MARTY J. AND ESTELA M. MILLER

Date: 7/17/11

By: Marty J. Miller

Marty J. Miller
Print Name

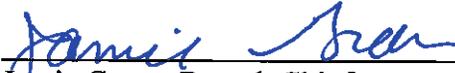
Date: 7-17-11

By: 

Estela M. Miller
Print Name

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/25/11

By: 
Jamie Green, Branch Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 7/25/11

By: 
Kent Johnson, Senior Assistant Regional Counsel
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Aug. 5, 2011 

ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Marty J. and Estela M. Miller, Respondent
Docket No. TSCA-07-2011-0016

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Marty J. and/or Estela M. Miller
5342 South Stoneborough
Wichita, Kansas 67217

Dated: 8/1/11


Kathy Robinson
Hearing Clerk, Region 7