



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2008 AUG 22 AM 8:41

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: TSCA-08-2008-0016

IN THE MATTER OF:

PENWOOD PLACE APARTMENTS  
DAVID NEISS

RESPONDENTS

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 21<sup>st</sup> DAY OF August, 2008.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
HEADING BY ERK

IN THE MATTER OF: )  
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Penwood Place Apartments )  
David Neiss )  
)  
Respondents )  
)

Docket No. TSCA-08-2008-0016


**SUPPLEMENTAL FACT SHEET**

1. In addition to the COMBINED COMPLAINT AND CONSENT AGREEMENT ("CCCA") filed in this matter, the Complainant submits the following factual basis in support of the violations alleged in the Complaint portion of the CCCA.

- a. On February 25, 2008, an authorized representative of EPA conducted a Residential Lead-Based Paint Hazard Reduction Act ("Residential Lead Hazard Act") and the Toxic Substances Control Act ("TSCA") compliance review for the Penwood Place Apartments located at 800 Pennsylvania Street, Denver, Colorado. During the compliance review and subsequent case review, EPA observed that the Penwood Place Apartments had violated regulations implementing the Residential Lead Hazard Act and TSCA. These observed violations are set out in detail in Paragraph 4 in the CCCA.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Office of Enforcement, Compliance, and  
Environmental Justice,  
Complainant.

Date: 8/21/08

By:   
Dana Stotsky  
Senior Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202-1129  
303.312.6905

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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IN THE MATTER OF: )  
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Penwood Place Apartments )  
David Neiss )  
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Respondent )  
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Docket No. **TSCA-08-2008-0016**  
**COMPLAINT AND CONSENT AGREEMENT  
(SIMULTANEOUS AND COMBINED)**

**COMPLAINT**

**GENERAL ALLEGATIONS**

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act (Residential Lead Hazard Act) and the Toxic Substances Control Act (TSCA). 42 U.S.C. § 4851 *et seq.*, and 15 U.S.C. § 2601 *et seq.* EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the Code of Federal Regulations (C.F.R.) and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Rules of Practice), 40 C.F.R. part 22, and this COMPLAINT AND CONSENT AGREEMENT (simultaneous combined action) is authorized by the rules. 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action. These general allegations apply to each count below.
2. Respondent is David Neiss (Respondent). Respondent is, and at all times relevant to this simultaneous combined action has been, the owner or co-owner, as that term is defined in 40 C.F.R. § 745.103, of Penwood Place Apartments located at 800 Pennsylvania Street, Denver, Colorado, which is "residential real property" within the meaning of § 1004(24) of the Residential Lead Hazard Act, 42 U.S.C. § 4851b (24), and was constructed before 1978.
3. EPA regulations require, among other things, that an owner of housing constructed before 1978 shall, prior to obligating a lessee under a contract to lease or rent the housing, provide or include in or attach to the leasing contract, (1) an EPA-approved lead hazard information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence),

(4) a list of any records or reports available to the owner related to lead-based paint or hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she received the above information, and (6) signatures (dated) by both parties certifying the accuracy of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).

### VIOLATIONS

4. As an owner or manager of residential real property, Respondent failed to comply with the following requirements:

- a. Respondent failed to provide an EPA-approved lead hazard information pamphlet prior to entering into lease contracts in violation of 40 C.F.R. § 745.107(a) (1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- b. Respondent failed to include a lead warning statement within the lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- c. Respondent failed to include a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence), within the lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- d. Respondent failed to include a list of any records or reports available to the owner related to lead-based paint or hazards (or a statement that no such records exist) within lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- e. Respondent failed to include a statement by the renters/lessees that the renters/lessees received the information described above in violation of 40 C.F.R. § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- f. Respondent failed to include the signature of the lessor and lessee certifying to the accuracy of their statements, to the best of their knowledge along with the dates of signature, in violation 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

## CONSENT AGREEMENT

5. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.

6. Respondent waives his/her right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Complaint and Consent Agreement.

7. This Complaint and Consent Agreement, upon incorporation into a Final Consent Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.

8. Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, as amended, authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of TSCA except for violations of the Lead-Based Paint Hazard Reduction Act which shall not exceed \$11,000 per violation. In arriving at the amount of the penalty, EPA, as required by section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the nature, circumstances, extent, and gravity of the violation, and, with respect to Respondent, the ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require. Respondent has demonstrated that he is in compliance with applicable provisions of the Residential Lead Hazard Act. Respondent consents and agrees to pay a civil penalty in the amount of **ONE THOUSAND EIGHTY FIVE DOLLARS (\$1085)**, in the manner described below in the following subparagraphs:

- a. Payment is due within 30 calendars from the date written on a Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact Natalie Pearson  
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22-checking  
Environmental Protection Agency  
Account 310006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:  
[www.pay.gov](http://www.pay.gov)  
Enter sfo1.1 in the search field  
Open form and complete required fields

**A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:**

Daniel Webster, Environmental Engineer  
Technical Enforcement Program (8ENF-AT)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues).
  - d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final consent order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the final consent order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
  - e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
9. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
10. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

11. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
12. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.
13. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.
14. Each party shall bear its own costs and attorney fees in connection with this matter.
15. This Complaint and Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.



In Re: PENWOOD PLACE APARTMENTS

Docket No.:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Office of Enforcement, Compliance, and  
Environmental Justice,  
Complainant.

Date: \_\_\_\_\_

By: Cynthia J. Reynolds, Acting  
Director  
Technical Enforcement Program

Date: AUG 21 2008

By: David J. Janik  
David J. Janik, Acting Director  
Matthew Cohn, Acting Supervisory Attorney  
Legal Enforcement Program

Date: 8/21/08

By: Dana Stotsky  
Dana Stotsky  
Senior Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202-1129  
303.312.6905

In Re: PENWOOD PLACE APARTMENTS  
Docket No.:

David Neiss,

Respondent.

Date:

8/6/08

By:



Title:

Owner

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **COMPLAINT AND CONSENT AGREEMENT (SIMULATANEOUS AND COMBINED)/FINAL ORDER** in the matter of **PENWOOD PLACE APARTMENTS DAVID NEISS; DOCKET NO.: TSCA-08-2008-0016** was filed with the Regional Hearing Clerk on August 22, 2008.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on August 22, 2008, to:

Susan Pass  
Penwood Place Apartments  
800 Pennsylvania Street  
Denver, CO 80203

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MSD-0002)  
Cincinnati, OH 45268

August 22, 2008

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

