

**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

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**BEFORE THE ADMINISTRATOR**

**In the Matter of:**

Selby Enterprises, L.L.C.,

**Respondent.**

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**Docket No. TSCA-07-2020-0040**

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency (EPA or Complainant), Region 7 and Selby Enterprises, L.L.C. (Respondent) 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**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 Respondent has 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* (Lead Disclosure Rule), promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

**Parties**

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Division Director of the Enforcement and Compliance Assurance Division, Region 7.

4. Respondent, Selby Enterprises, L.L.C., is a limited liability company doing business in the state of Iowa as a property management company.

### 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 *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 1018 of the Act required the 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.

7. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103 define “target housing” as 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.

8. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. §§ 107, 745.110, 745.113 or 745.115 is a violation of 42 U.S.C. § 4852d(b)(5) and of TSCA Section 409, 15 U.S.C. § 2689.

9. The regulation at 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, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. The regulation at 40 C.F.R. § 745.103 defines “lessor” as entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

11. Section 1018(b)(5) of the Residential Lead Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), authorizes the EPA Administrator to assess a civil penalty of up to \$10,000 for each violation of the Residential Lead Based Paint Hazard Reduction Act, prohibited under Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty authority set forth under Section 16 of TSCA, 15 U.S.C. § 2615. The Federal Civil Penalties Inflation Adjustment Improvements

Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalties to \$17,834 for violations that occur after November 2, 2015, and are assessed after February 6, 2019.

### **General Factual Allegations**

12. On or about April 20, 2018 and June 13, 2018, the EPA issued requests for information to evaluate Respondent's compliance with TSCA and the requirements of the Lead Disclosure Rule pursuant to Section 11 of TSCA, 15 U.S.C. § 2610.

13. Respondent is, and at all times referred to herein was, a limited liability company doing business in the state of Iowa.

14. Respondent, at all times referred to herein, was the "lessor" as defined by 40 C.F.R. § 745.103, for the lease of [REDACTED] both located in Davenport, Iowa (the Properties).

15. Respondent entered into a contract to lease [REDACTED] on or about August 25, 2017 and [REDACTED] on or about July 31, 2017.

16. The Properties were constructed before 1978.

17. The Properties are "target housing" as defined by 40 C.F.R. § 745.103.

18. At all times relevant to this Consent Agreement and Final Order, a child under the age of six occupied the property located at [REDACTED].

19. At all times relevant to this Consent Agreement and Final Order, no children resided at the property located at [REDACTED].

20. As a result of the information obtained by the EPA, Complainant has determined that violations of the Lead Disclosure Rule, 40 C.F.R. Part 745, Subpart F, and Section 409 of TSCA, 15 U.S.C. § 2689, have occurred.

### **Allegations of Violation**

21. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

#### **Count 1**

22. The facts stated in Paragraphs 12 through 20 above are herein incorporated.

23. Pursuant to 40 C.F.R. § 745.107(a)(1), prior to a purchaser or lessee being obligated under any contract to purchase or lease target housing, the seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such

pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet that has been approved for use in that State by EPA.

24. The information gathered by EPA revealed that Respondent failed to provide the lessee of [REDACTED], Davenport, Iowa with an EPA-approved lead hazard information pamphlet before lessee was obligated under a contract to lease the target housing unit.

25. Respondent's failure to provide the EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease the target housing unit is a violation of 40 C.F.R. § 745.107(a)(1) and pursuant to 40 C.F.R. § 745.118(e), a violation of 42 U.S.C. § 4852d(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

26. The facts stated in Paragraphs 12 through 20 above are herein incorporated.

27. Pursuant to 40 C.F.R. § 745.107(a)(1), prior to a purchaser or lessee being obligated under any contract to purchase or lease target housing, the seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet that has been approved for use in that State by EPA.

28. The information gathered by EPA revealed that Respondent failed to provide the lessee of [REDACTED], Davenport, Iowa with an EPA-approved lead hazard information pamphlet before lessee was obligated under a contract to lease the target housing unit.

29. Respondent's failure to provide the EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease the target housing unit is a violation of 40 C.F.R. § 745.107(a)(1) and pursuant to 40 C.F.R. § 745.118(e), a violation of 42 U.S.C. § 4852d(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

**CONSENT AGREEMENT**

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) Admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;

- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

31. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and to completion of the SEP described below.

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

### **Penalty Payment**

33. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of One Thousand Five Hundred and Three Dollars (\$1,503), as set forth below, and shall perform a Supplemental Environmental Project (SEP) as set forth in this Consent Agreement and Final Order. The projected cost of the SEP is Fourteen Thousand Two Hundred Fifty dollars (\$14,250). The SEP is further described below.

34. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and 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  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

35. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

36. Respondent understands that its failure to timely pay any portion of the civil penalty or any portion of a stipulated penalty as stated in Paragraph 50 may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

37. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for purposes of settlement to the payment of the civil penalty and completion of the Supplemental Environmental Project described below.

### **Supplemental Environmental Project**

38. In response to the violations of TSCA, alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by TSCA or any other federal, state, or local law, Respondent shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

39. Respondent shall complete the following SEP: Abatement of lead-based paint at target housing by and through a certified lead abatement contractor at the cost of not less than Thirteen Thousand Five Hundred Dollars (\$13,500), and clearance testing at the cost of not less than Seven Hundred Fifty Dollars (\$750) for a total cost of Fourteen Thousand Two Hundred Fifty Dollars (\$14,250). The abatement contractor will replace twelve pre-1978, wooden windows with deteriorating lead paint with Energy Star vinyl replacement windows in accordance with the Iowa state lead-based paint abatement regulations. The Respondent shall provide written notification to the state of Iowa, with a copy to the EPA (see contact information in Paragraph 46 below) that abatement work will be performed as part of the SEP. The abatement work shall be performed at [REDACTED] Davenport, Iowa. In accordance with Iowa state regulations, following the completion of the abatement work, Respondent must have lead clearance testing performed by a certified risk assessor. The abatement work and the lead clearance testing may not be performed by the same individual or entity.

40. Respondent agrees that the SEP shall be completed within six (6) months of the Effective Date of this Consent Agreement and Final Order.

41. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

42. Within seven (7) months of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 46 below. The SEP Completion Report shall be subject to EPA review and approval as provided in Paragraph 47 below. The SEP Completion Report shall contain the following information:

- (a) Detailed description of the SEP as implemented. The description shall include but not limited to the following itemized costs:
  - (i) Invoices documenting the cost for windows purchased;
  - (ii) Invoices documenting labor costs;
  - (iii) Invoices documenting disposal costs;
  - (iv) Invoices documenting confirmation testing costs.
- (b) Description of any problems encountered in implementation of the projects and the solution thereto;
- (c) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP;
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
- (e) The final abatement report, including clearance testing results, as required by state law.

43. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

44. Respondent has selected Bzzzy "B" Properties LLC as a certified lead abatement contractor to assist with implementation of the SEP. Respondent has selected Iowa Lead & Asbestos Safety to compete the clearance testing after the abatement work is complete.

45. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

46. The SEP Completion Report shall be submitted on or before the due date specified above to:

Cassie Mance, LCARD/TTPB/TLBP  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Kane Young  
Iowa Department of Public Health  
321 East 12<sup>th</sup> Street  
Des Moines, Iowa 50319.

47. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent may be subject to the stipulated penalties as set forth below.

48. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

49. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is Fourteen Thousand Two Hundred Fifty dollars (\$14,250);
- (b) That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims



- resolved in this Consent Agreement and Final Order;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
  - (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
  - (g) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 39.
  - (h) Respondent has inquired of Bzzzy "B" Properties LLC and Iowa Lead & Asbestos Safety whether either entity is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by Bzzzy "B" Properties LLC and Iowa Lead & Asbestos Safety that neither entity is a party to such a transaction.

50. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Consent Agreement and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
  - (i) If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of Fifteen Thousand Dollars (\$15,000), minus any documented expenditures determined by EPA to be acceptable for the SEP.
  - (ii) If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of SEP.
  - (iii) For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- (c) Stipulated penalties shall begin to accrue on the day after performance is

due and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.

- (d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 36 herein.
- (e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
- (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

### **Effect of Settlement and Reservation of Rights**

51. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

52. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph directly below.

53. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

54. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

55. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

### **General Provisions**

56. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

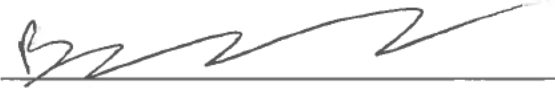
57. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

58. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

59. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**  
Selby Enterprises, L.L.C.

Date: 12-11-19

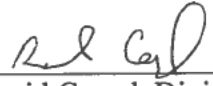
By: 

Blake Selby  
Print Name

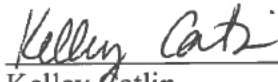
Owner  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 12/17/18

  
\_\_\_\_\_  
David Cozad, Division Director  
Enforcement and Compliance Assurance Division

Date: 12/17/19

  
\_\_\_\_\_  
Kelley Catlin  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 16(a) of TSCA, 42 U.S.C. § 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed by the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Jan. 7, 2020  
Date

**CERTIFICATE OF SERVICE**

I certify that 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:

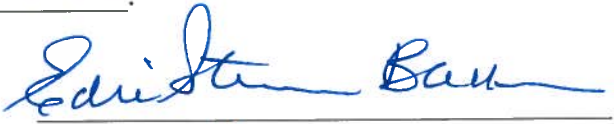
Copy via Email to Complainant:

Ms. Kelley Catlin, EPA.

Copy via Email to Respondent:

Mr. Blake Selby, Selby Enterprises, L.L.C.  
selbyrentals@gmail.com

Dated this 7<sup>th</sup> day of January, 2020.

  
Signed  
for Lisa Hansen  
Region 7  
Heavy Clerk