

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270**

In the Matter of	§	
	§	
Dave Chakos and Carye West,	§	Docket No. TSCA-06-2024-6171
	§	
Respondents.	§	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Dave Chakos and Carye West ("Respondents") have agreed to a settlement of this action before the 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 initiated 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 the EPA has reason to believe that Respondents 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, promulgated pursuant to Section 1019 of the Residential Lead-Based Paint Hazard

Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondents are Dave Chakos and Carye West, the property owners of the residence at 1807 Inverness, Austin, Texas 78745.

Statutory and Regulatory Background

5. TSCA was amended with the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, with the addition of Title IV – Lead Exposure Reduction, Section 401 to 412 of TSCA, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required the EPA and the Department of Housing and Urban Development to jointly issue regulation requiring the disclosure of known lead-based paint and/or lead-based paint hazards by people selling or leasing housing constructed prior to 1978.

6. 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. The requirements set forth in the regulations at 40 C.F.R. Part 745, Subpart F, apply to all sales or leases of target housing, unless otherwise excluded as set forth in 40 C.F.R. § 745.101.

8. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. §§ 745.107 (disclosure requirements), 745.110 (evaluation), 745.113 (certification and acknowledgement), or 745.115 (agent responsibilities), is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, inter alia, any provision of 40 C.F.R. Part 745, Subpart F.

9. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes a civil penalty of not more than \$37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which limits penalties for violations of 42 U.S.C. § 4852d(b)(5), assessed under Section 16 of TSCA, 15 U.S.C. § 2615, to not more than \$10,000 per violation. Each day that such a violation continues constitutes a separate violation of Section 409. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$18,364 for

violations that occurred after November 2, 2015, and for which penalties are assessed on or after February 12, 2022

Definitions

10. The regulation at 40 C.F.R. § 745.103 defines “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 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

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

12. 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.

13. The regulation at 40 C.F.R. § 745.103 defines “owner” as any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

EPA Findings of Fact and Conclusions of Law

14. Pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, the EPA received a complaint to evaluate Respondents' compliance with TSCA.

15. On August 08, 2023, the EPA received a complaint related to Respondents' lease of the Property.

16. On August 25, 2023, EPA requested, and Respondents provided documentation and information concerning Respondents' compliance with TSCA and the lead disclosure requirements.

17. During the EPA's compliance review, and at all times referred to herein, Respondents were engaged in the lease of target-housing, as defined by 40 C.F.R. § 745.103.

18. Respondents are, and at all times referred to herein were, a "lessor", as defined by 40 C.F.R. § 745.103.

19. From on or about April 27-August 14, 2023, Respondents entered into a one-year contract to lease the target housing located at 1807 Inverness in Austin, Texas (the Property).

20. The Property was constructed before 1978.

21. The Property is "target housing" as defined by 40 C.F.R. § 745.103.

22. On November 9, 2023, Respondents sold the Property.

23. On December 14, 2023, the EPA sent Respondents a Notice of Potential Violation and Opportunity to Confer letter. On February 21, 2024, the EPA responded to the documentation and information received from Respondents as a result of the opportunity to confer and articulated the EPA's position concerning Respondents' compliance with TSCA.

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

EPA Findings of Violation

25. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

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

Count 1

27. Pursuant to 40 C.F.R. § 745.107(a)(1), the seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not an otherwise exempt transaction.

28. Respondents failed to provide the lessees of the Property with the EPA-approved lead hazard information pamphlet before the lessees were obligated under the contract to lease the Property.

29. Respondents' failure to provide the EPA-approved lead hazard information pamphlet to the lessees of the Property is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

30. Pursuant to 40 C.F.R. § 745.113(b), each contract to lease target housing shall include, as an attachment or within the contract, the elements required by 40 C.F.R. § 5

745.113(b)(1) through (b)(4).

31. Respondents failed to include in contract to lease the Property, as an attachment or within the contract, the elements required by 40 C.F.R. §§ 745.113(b)(1) through (b)(4).

32. Respondents' failure to include the elements required by 40 C.F.R. §§ 745.113(b)(1) through (b)(4) in the contract for the lease of the Property is a violation of 40 C.F.R. § 745.113(b) and Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

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

- a. admit the jurisdictional allegations set forth herein;
- b. neither admit nor deny the specific factual allegations stated herein;
- c. consent to the assessment of a civil penalty, as stated herein;
- d. consent to the issuance of any specified compliance or corrective action order;
- e. consent to any conditions specified herein;
- f. consent to any stated Permit Action;
- g. waive any right to contest the allegations set forth herein; and
- h. waive its rights to appeal the Final Order accompanying this Consent Agreement.

34. Respondents consent 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.

35. Respondents 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

36. Respondents agree that, in settlement of the claims alleged herein, Respondents shall pay a civil penalty of three hundred and fifty dollars (\$350.00), as set forth below.

37. EPA has considered the appropriateness of the penalty pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B) and has determined that based on substantiated ability to pay information, the appropriate penalty for the violation is three hundred and fifty dollars to be paid within thirty (30) days of receiving notice of the effective date of the Final Order.

38. Respondents shall pay the penalty within thirty (30) days of receiving notice of the effective date of the Final Order. Such payment shall identify Respondents 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 979078
St. Louis, Missouri 63197-9000

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

39. A copy of the check or other information confirming payment shall simultaneously be sent by electronic mail to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)

Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Stan Lancaster
Enforcement and Compliance Assurance Division
Toxics Enforcement Section
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDST)
Dallas, Texas 75270-2101
lancaster.stan@epa.gov

40. Respondents understand that its failure to timely pay any portion of the civil penalty 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 percent (6%) 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).

41. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a

law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondents herein agree, that:

- a. Respondents shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondents shall therein certify that its completed IRS Form W-9 includes Respondents’ correct TIN or that Respondents have applied and is waiting for issuance of a TIN; Respondents shall email their completed Form W-9 to EPA’s Cincinnati Finance Center at chalifoux.jessica@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- c. In the event that Respondents have certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondents within 30 days after the effective date, then Respondents, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. Notify EPA’s Cincinnati Finance Center of this fact, via email, within

30 days after the effective date of this Order; and

ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

Effect of Settlement and Reservation of Rights

42. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondents' 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.

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

44. Respondents certify by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations.

45. 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 Respondents' obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

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

General Provisions

47. By signing this Consent Agreement, the undersigned representative of Respondents certify that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

48. 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 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

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

51. The EPA and Respondents agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondents further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: mcdonald.ashley@epa.gov

To Respondent: caryewest@hotmail.com; and

dchakos@gmail.com

RESPONDENTS

Dave Chakos and Carye West

Date: 7-20-2024

By: David Chakos and Carye West
Signatures

David Chakos and CARYE WEST
Print Names

Respondants
Titles

COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: July 22, 2024

Cheryl T. Seager

Digitally signed by CHERYL
SEAGER
Date: 2024.07.22 10:52:16
-05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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.

Respondents are 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 with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

THOMAS
RUCKI

Digitally signed by
THOMAS RUCKI
Date: 2024.07.23
13:58:12 -04'00'

Thomas Rucki
Regional Judicial Officer

Date _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Mcdonald.ashley@epa.gov

Copy via Email to Respondent:

Carye West
caryewest@hotmail.com

Dave Chakos
dchakos@gmail.com

A handwritten signature in blue ink, appearing to read "Ashley McDonald", is written over a horizontal line.

Signed
Office of Regional Counsel
U.S. EPA, Region 6