



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

April 9, 2013

g

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7670 6018

Mr. Clinton T. Anderson
CTA Properties
333 North Randall Road
St. Charles, Illinois 60174

Consent Agreement and Final Order in the Matter of
Clinton T. Anderson Docket No. TSCA-05-2012-0018

Dear Mr. Anderson:

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 April 9, 2013, with the Regional Hearing Clerk. *g*

The civil penalty in the amount of \$2,334.00 is to be paid in the manner described in paragraphs 9 thru 11. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by May 9, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Pamela Grace

Pamela Grace
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Clinton T. Anderson, Owner)
St. Charles, Illinois,)

Respondent.)
_____)

Docket No. TSCA-5-2012-0018.

Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)



Consent Agreement and Final Order

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. On September 6, 2012, EPA filed the Complaint in this action against Respondent Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois. The Complaint alleged that Respondent violated Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and 40 C.F.R. Part 745, in seven contracts to lease target housing.

3. On or about September 20, 2012, Respondent filed an Answer to the Complaint and requested a hearing for this action.

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and admits or denies the factual allegations in the Complaint as documented in his Answer.

5. Respondent waives any right to contest the allegations in the Complaint and his right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that he is complying fully with the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations at 40 C.F.R. Part 745.

7. Respondent consents to the assessment of the civil penalty stated in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalties

9. In consideration of Respondent's agreement to perform a Supplemental Environmental Project, EPA agrees to mitigate the civil penalty of \$21,007.80 to \$2,334.20.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$2,233.20 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The cashier's check must state Respondent's name and the docket number of this CAFO and the docket number of this CAFO.

11. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

12. This civil penalty is not deductible for federal tax purposes.

13. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 27 of this CAFO, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

14. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

15. Respondent must complete a supplemental environmental project (SEP) designed to protect public health and the environment by removing lead-based paint and hazards from residential dwellings which are the subject of this action.

16. Respondent's SEP must replace by August 15, 2013, the lead-based painted

windows of its residential dwellings located at: 1) 221 N. 4th Street, Lower Unit, St. Charles, Illinois; 2) 221 N. 4th Street, Upper Unit, St. Charles, Illinois; 3) 223 N. 4th Street, St. Charles, Illinois; and, 4) 120 N. 4th Street, St. Charles, Illinois.

17. Respondent must expend at least \$20,098.20 to complete its SEP.

18. Respondent certifies as follows:

I certify that Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois, is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois, has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois, is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

19. Respondent must conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition) and the State of Illinois law and regulations.

20. EPA may inspect apartments which are the subject of this action at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

21. Respondent must submit to EPA by September 15, 2013, a SEP Completion Report.

The SEP Report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP.

22. Respondent must submit all notices and reports required by this CAFO by first class mail to Pamela Grace, Case Developer, Pesticides and Toxics Compliance Section at the address provided in paragraph 11 of the CAFO.

23. All of Respondent's submitted reports must certify it is true and complete by including the following statement and signed.

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

24. Upon EPA receipt of Respondent's SEP Completion Report, EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and SEP report;
- b. There are deficiencies in the SEP as completed, or in the SEP Report, and EPA will give Respondent 30 days to correct the deficiencies; or
- c. Respondent has not satisfactorily completed the SEP or the SEP Report and EPA will seek stipulated penalties under the paragraph below.

25. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from

EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph below.

26. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows.

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay an additional civil penalty of \$20,098.80.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the required expenditure, Respondent will not be liable for any stipulated penalty under subparagraph a.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 17, Respondent must pay a penalty of \$2,233.20.
- d. If Respondent did not submit timely the SEP Completion Report, Respondent must pay a penalty in the following amount for each day after the Report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u> |
|--------------------------------------|---|
| \$ 50.00 | 1 st through 14 th day |
| \$100.00 | 15 th through 30 th day |
| \$200.00 | 31 st day and beyond |

27. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

28. Once Respondent receives EPA's written demand for any stipulated or additional penalties, Respondent must pay them within 15 days via the payment method specified in

paragraphs 10 and 11 of this CAFO.

29. Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP for federal income tax purposes.

30. Any public statement that Respondent makes referring to the SEP must include the following language, "Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois" completed this project under the settlement of the United States Environmental Protection Agency's enforcement action against Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois for alleged violations of Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and 40 C.F.R. Part 745.

31. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO.

Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of the delay.

If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

33. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect Respondent's responsibility to comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992 and other applicable federal, state and local laws.

35. The terms of this CAFO bind Respondent.

36. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

37. Each party agrees to bear its own costs and attorneys fees in this action.

38. This CAFO constitutes the entire agreement between the parties.

In the Matter of:

**Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois.
Docket No. TSCA-5-2012-0018.**

2/11/13

Date

Clinton T. Anderson

Clinton T. Anderson, Owner
CTA Properties, St. Charles, Illinois

United States Environmental Protection Agency, Complainant

4/02/13

Date

Michael D. Harris for M.G.


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Clinton T. Anderson, Owner, CTA Properties, St. Charles, Illinois.
Docket No. TSCA-5-2012-0018.

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall 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.

4-4-13
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5


APR - 8 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY


CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving CTA Properties was filed on April 9, 2013, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7670 6018 to:

Mr. Clinton T. Anderson
CTA Properties
333 North Randall Road
St. Charles, Illinois 60174

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jeffery M. Trevino, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2012-0018


APR - 8 2013

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