

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

BOAT HOUSE, INCORPORATED

Agency, Missouri

Respondent

Docket No. TSCA-07-2008-0031

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Boat House, Incorporated (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, 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 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, 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 Respondent is Boat House, Incorporated, a corporation incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

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.

Factual Background

6. Respondent is, and at all times referred to herein was, a "person" within the meaning of TSCA.

7. Respondent is an "agent" as that term is defined by 40 C.F.R. § 745.103, for the purpose of leasing Apartment 1 of 522 North 19th Street, St. Joseph, Missouri 64503.

8. 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.

Alleged Violations

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

Count 1

9. The facts stated in Paragraphs 1 through 8 above are herein incorporated.

10. Information collected pursuant to an EPA inspection of Boat House, Incorporated on August 17, 2007, shows that Respondent entered into an oral contract to lease Apartment 1 of 522 North 19th Street, St. Joseph, Missouri 64503, on or after January 1, 2007.

11. Information collected shows that Respondent failed to perform the following acts before the lessee was obligated under a contract to lease target housing:

- a) provide lessee with an EPA-approved lead hazard information pamphlet;
- b) include the Lead Warning Statement in the contract to lease target housing;

- c) include a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of same;
- d) include a list of any records or reports available to lessor pertaining to lead-based paint/hazards or indicating no such records/reports available;
- e) include a statement affirming lessee's receipt of required information;
- f) include the acknowledgement by the agent that it has informed lessor of lessor's legal obligations; and
- g) include lessor and agent signatures certifying to accuracy of statements/information.

12. Respondent's failure to perform the acts indicated in paragraph 11 above are violations of 40 C.F.R. § 745.107(a)(1) and 40 C.F.R. § 745.113(b)(1) through (b)(6) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

13. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

14. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

15. Respondent neither admits nor denies the factual allegations set forth in this Consent Agreement and Final Order.

16. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and Final Order.

17. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

18. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

19. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$1,500 to be paid within thirty (30) days of the effective date of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this Consent Agreement and Final Order.

20. The effect of settlement described in Paragraph 19 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 18 of this Consent Agreement and Final Order.

21. Respondent understands that its failure to timely pay any portion of the 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.

22. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

23. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and according to the terms of this Consent Agreement and Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of \$1,500 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the 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:

EPA-Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 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

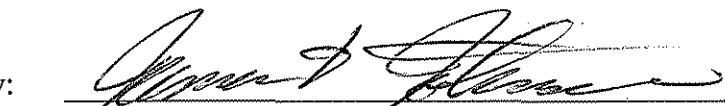
Jonathan Meyer, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. The effective date of this Consent Agreement and Final Order shall be the date on which it is signed by the Regional Judicial Officer.

4. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

RESPONDENT
BOAT HOUSE, INCORPORATED

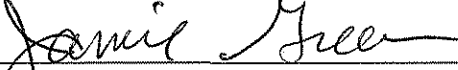
Date: 7-25-08

By: 

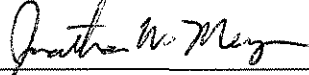
James D. Johnson president
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY


Date: 7/29/08

By: 
Jamie Green, Chief
Toxics and Pesticides Branch

Date: 7-28-08

By: 
Jonathan Meyer
Office of Regional Counsel

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

Date: July 29, 2008 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Boat House, Incorporated, Respondent
Docket No. TSCA-07-2008-0031

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:

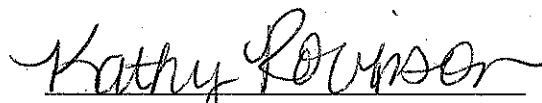
Copy hand delivered to
Attorney for Complainant:

Jonathan Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

James D. and Connie S. Johnson
Boat House, Incorporated
8750 South East Route H
Agency, Missouri 64401

Dated: 7/29/08



Kathy Robinson
Hearing Clerk, Region 7