

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

05 JUN -9 AM 9:52
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)

A.J.V. PROPERTIES)
Omaha, Nebraska)

Respondent)

) Docket No. TSCA-07-2005-0263

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and A.J.V. Properties (Respondent) 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, 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).

ALLEGATIONS

Jurisdiction

1. This 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, Radiation, Asbestos, Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent is A.J.V. Properties, a company conducting business located in Omaha, Nebraska.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851-56, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding to it Sections 401 through 412, 15 U.S.C. §§ 2681-92. Section 1018 of the Act required that EPA and the Department of Housing and Urban Development (HUD) jointly issue regulations requiring the disclosure of information relating to lead-based paint and/or lead-based paint hazards to persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. EPA and HUD issued those regulations on March 6, 1996, which are codified at 40 C.F.R. Part 745, Subpart F. 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.

Alleged Violations

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

Counts 1

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

8. Respondent is the "lessor" as the term is defined by 40 C.F.R. § 745.103, of the residential property located at 2203 Benson Garden Boulevard, Omaha, Nebraska ("Benson Gardens").

9. The property referenced above is "target housing" as that term is defined by 40 C.F.R. § 745.103 because the property is housing constructed before 1978.

10. Information collected shows that Respondent entered into five contracts to lease the individual property in 2003 and 2004. These contracts were as follows:

- 2305 Benson Garden Blvd., Apt. 8-O, March 1, 2004
- 2247 Benson Garden Blvd., Apt. 2-M, December 1, 2003
- 2255 Benson Garden Blvd., Apt. 1-F, March 1, 2004
- 2141 Benson Garden Blvd., Apt. 6-E, July 1, 2003
- 2111 Benson Garden Blvd., Apt. 5-N, October 1, 2003.

11. Information collected shows that in each of the five contracts Respondent failed to provide the lessees with an EPA-approved lead hazard information pamphlet before the lessees were obligated under a contract to lease the target housing.

12. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation 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. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

14. Respondent neither admits nor denies the factual allegations set forth above.

15. 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 the Final Order accompanying this Consent Agreement.

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

17. 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.

18. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Five Hundred and Fifty Dollars (\$550) to be paid within thirty (30) days of the effective date of the Final Order.

19. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 18 above, 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. 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.

20. In settlement of this matter, Respondent has agreed and completed the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits: a lead inspection was conducted in accordance with

HUD guidelines and the appropriate documentation certifying that the target housing is lead-based paint free by a certified inspector was provided to the EPA.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C §§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of Five Hundred and Fifty Dollars (\$550) 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
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101; and


Melissa A. Coleman
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT

J.V. PROPERTIES

Date: 5/24/05

By: 
Albert J. Vacanti Contractor
Print Name Title

COMPLAINANT

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/7/05


By: Jerry A. Hacker
for Lynn Slugantz, Chief
Radiation, Asbestos, Lead and Indoor Programs Branch

Date: 6/6/2005

By: Melissa Coleman
Melissa Coleman
Office of Regional Counsel

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

Date: June 9, 2005


ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF A.J.V. Properties, Respondent
Docket No. TSCA-07-2005-0263

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:

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

Copy by Certified Mail Return Receipt to:

Frank Pospishil
Abrahams, Kaslow & Cassman, LLP
8712 West Dodge Road, Suite 300
Omaha, Nebraska, 68114

Dated: 6/9/05


Kathy Robinson
Regional Hearing Clerk