

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)
)
ROGER E. KINSEY and JOAN M. KINSEY) Docket No. TSCA-07-2007-0018
Lincoln, Nebraska)
)
Respondents)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Roger E. Kinsey and Joan M. Kinsey (Respondents) 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 Respondents have 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 Respondents are Roger E. Kinsey and Joan M. Kinsey, 4052 Sheridan Boulevard, Lincoln, Nebraska 68506.

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.

Alleged Violations

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

Count 1

7. Respondents are, and were at all times referred to herein, “persons” within the meaning of TSCA.

8. Respondents are the lessors, as that term is defined by 40 C.F.R. § 745.103, of the following property: 2917 L. Street, Lincoln, Nebraska 68506; 3242 S. 40th Street, Lincoln, Nebraska 68506; 3244 S. 40th Street, Lincoln, Nebraska 68506; 3339 Curtis Drive, Lincoln, Nebraska 68506; 1339 Idylwild Drive, Lincoln, Nebraska 68506.

9. 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.

10. Information collected shows that Respondents entered into a contract to lease the following rental property on or about the following dates:

2917 L. Street, Lincoln, Nebraska 68506 – July 25, 2006
3242 S. 40th Street, Lincoln, Nebraska 68506 – January 7, 2006
3244 S. 40th Street, Lincoln, Nebraska 68506 – November 12, 2005
3339 Curtis Drive, Lincoln, Nebraska 68506 – September 3, 2004
1339 Idylwild Drive, Lincoln, Nebraska 68506 – June 1, 2005

11. Information collected shows that Respondents failed to include, either on an attachment or within the lease contract, the “Lead Warning Statement” contained in 40 C.F.R. § 745.113(b)(1), as required by 40 C.F.R. § 745.113(b)(1).

12. Respondents' failure to include, either on an attachment or within the lease contract, the "Lead Warning Statement" is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

13. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

14. Respondents admit the factual allegations set forth above.

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

17. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F, and that there are no outstanding abatement orders pending on any other target housing owned by the Respondents.

18. Respondents consent to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of \$900 to be paid within thirty (30) days of the effective date of the Final Order.

19. Respondents understand that their 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, 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.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondents shall pay a mitigated civil penalty of \$900 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondents by name and docket number and shall be by certified or cashier's check made payable to the "Treasurer, United States of America" and sent to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

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

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

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

RESPONDENTS
ROGER E. KINSEY AND JOAN M. KINSEY

Date: January 28, 2007 By: Roger E. Kinsey

Date: 1-28-2007 By: Joan M. Kinsey

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY


Date: 2/15/07

By: Jamie Green
Jamie Green, Branch Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 2/15/07

By: Kent Johnson
Kent Johnson, Senior Assistant Regional Counsel
Office of Regional Counsel

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

Date: February 21, 2007 

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

IN THE MATTER OF Roger E. Kinsey and Jaon M. Kinsey, Respondents
Docket No. TSCA-07-2007-0018

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:

Kent Johnson
Senior 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:

Roger E. Kinsey and/or
Joan M. Kinsey
4052 Sheridan Boulevard
Lincoln, Nebraska 68506

Dated: 2/21/07


Kathy Robinson
Hearing Clerk, Region 7