

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of )

DANA PARTNERSHIP )

Omaha, Nebraska )

Respondent )

) Docket No. TSCA-07-2008-0019  
)  
)  
)  
)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 ("EPA" or "Complainant"), and Dana Partnership (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) 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), 22.18(b)(2), and 22.18(b)(3).

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 Dana Partnership, 105 N. 31<sup>st</sup> Avenue, Omaha, Nebraska 68131.

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 phase-out 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.

Violations

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

General Allegations

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

8. Respondent is the "owner" or "lessor" as those terms are defined by 40 C.F.R. § 745.103, for the purpose of leasing apartments at the following locations:

<u>Name of Apartment Complex</u>	<u>Address</u>
Sara Mia Apartments	118 North 31 <sup>st</sup> St., Omaha, Nebraska 68131
Sara Mia Apartments	120 North 31 <sup>st</sup> St., Omaha, Nebraska 68131
Turner Park Apartments	3102-3106 Dodge St., Omaha, Nebraska 68131

9. The properties referenced in Paragraph 8 were constructed before 1978; therefore, they are "target housing" as defined by 40 C.F.R. § 745.103.

10. On April 16, 2007, a representative of the EPA conducted an evaluation of Respondent's compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and collected records and information from Respondent as part of that evaluation.

11. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #1, 118 North 31<sup>st</sup> Street, Omaha, Nebraska, at the Sara Mia Apartments on or about March 30, 2007.

12. Information collected during the evaluation showed that at the time of the lease discussed in Paragraph 11, the tenants included a child under the age of 18.

13. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #8, 120 North 31<sup>st</sup> Street, Omaha, Nebraska, at the Sara Mia Apartments on or about November 6, 2006.

14. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #109, 3102 Dodge Street, Omaha, Nebraska, at the Turner Park Apartments on or about February 3, 2006.

15. Information collected during the evaluation showed that at the time of the lease discussed in Paragraph 14, the tenants included a child under the age of 18.

16. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #113, 3102 Dodge Street, Omaha, Nebraska, at the Turner Park Apartments on or about June 22, 2006.

17. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #106, 3102 Dodge Street, Omaha, Nebraska, at the Turner Park Apartments on or about February 28, 2006.

18. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #111, 3102 Dodge Street, Omaha, Nebraska, at the Turner Park Apartments on or about February 13, 2006.

19. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #210, 3106 Dodge Street, Omaha, Nebraska, at the Turner Park Apartments on or about January 19, 2007.

Count 1

20. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 19 above, as if fully set forth herein.

21. 40 C.F.R. § 745.113(b)(4) requires that each contract to lease target housing include, as an attachment or within the contract, a statement by the lessee affirming receipt of the lead hazard information pamphlet and the information detailed in 40 C.F.R. § 745.113(b)(2) and (b)(3).

22. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 11 failed to include a statement by lessee affirming receipt of the lead hazard information pamphlet and the information detailed in 40 C.F.R. § 745.113(b)(2) and (b)(3).

23. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 13 failed to include a statement by lessee affirming receipt of the information detailed in 40 C.F.R. § 745.113(b)(2) and (b)(3).

24. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 14 failed to include a statement by lessee affirming receipt of the lead hazard information pamphlet and the information detailed in 40 C.F.R. § 745.113(b)(2) and (b)(3).

25. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 16 failed to include a statement by lessee affirming receipt of the lead hazard information pamphlet and the information detailed in 40 C.F.R. § 745.113(b)(2) and (b)(3).

26. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 17 failed to include a statement by lessee affirming receipt of the lead hazard information pamphlet and the information detailed in 40 C.F.R. § 745.113(b)(2) and (b)(3).

27. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 18 failed to include a statement by lessee affirming receipt of the lead hazard information pamphlet and the information detailed in 40 C.F.R. § 745.113(b)(2) and (b)(3).

28. Respondent's failure to include the lessee's affirmation as described in Paragraphs 22 through 27, above, is a violation of 40 C.F.R. §§ 745.113(b)(4) 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 of 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.

Count 2

29. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 28, above, as if fully set forth herein.

30. 40 C.F.R. § 745.113(b)(5) requires that when agents are involved in the transaction to lease target housing on behalf of the lessor, the contract to lease target housing

must contain, as an attachment or within the contract, a statement that the agent has informed the lessor of lessor's obligations under 42 U.S.C. § 4852d, and a statement that agent is aware of his/her duty to ensure compliance with the requirements of 40 C.F.R. Part 745 Subpart F.

31. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 11 failed to include an acknowledgement by the agent that he/she had informed lessor of lessors obligations under 42 U.S.C. § 4852d and is aware of his/her responsibility to ensure compliance with 40 C.F.R. Part 745 Subpart F.

32. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 13 failed to include an acknowledgement by the agent that he/she had informed lessor of lessors obligations under 42 U.S.C. § 4852d and is aware of his/her responsibility to ensure compliance with 40 C.F.R. Part 745 Subpart F.

33. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 14 failed to include an acknowledgement by the agent that he/she had informed lessor of lessors obligations under 42 U.S.C. § 4852d and is aware of his/her responsibility to ensure compliance with 40 C.F.R. Part 745 Subpart F.

34. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 16 failed to include an acknowledgement by the agent that he/she had informed lessor of lessors obligations under 42 U.S.C. § 4852d and is aware of his/her responsibility to ensure compliance with 40 C.F.R. Part 745 Subpart F.

35. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 17 failed to include an acknowledgement by the agent that

he/she had informed lessor of lessors obligations under 42 U.S.C. § 4852d and is aware of his/her responsibility to ensure compliance with 40 C.F.R. Part 745 Subpart F.

36. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 18 failed to include an acknowledgement by the agent that he/she had informed lessor of lessors obligations under 42 U.S.C. § 4852d and is aware of his/her responsibility to ensure compliance with 40 C.F.R. Part 745 Subpart F.

37. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 19 failed to include an acknowledgement by the agent that he/she had informed lessor of lessors obligations under 42 U.S.C. § 4852d and is aware of his/her responsibility to ensure compliance with 40 C.F.R. Part 745 Subpart F.

38. Respondent's failure to obtain the agent's acknowledgement as described in Paragraphs 31 through 37 is a violation of 40 C.F.R. §§ 745.113(b)(5) 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 of 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.

Count 3

39. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 38, above, as if fully set forth herein.

40. 40 C.F.R. § 745.113(b)(6) requires that each contract to lease target housing to include, as an attachment or within the contract, signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of their signatures.

41. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 11 failed to include the signature of the agent, along with date of his/her signature, certifying to the accuracy of his/her statements.

42. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 13 failed to include the signature of the agent, along with date of his/her signature, certifying to the accuracy of his/her statements.

43. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 14 failed to include the signature of the agent, along with date of his/her signature, certifying to the accuracy of his/her statements.

44. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 16 failed to include the signature of the agent, along with date of his/her signature, certifying to the accuracy of his/her statements.

45. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 17 failed to include the signature of the agent, along with date of his/her signature, certifying to the accuracy of his/her statements.

46. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 18 failed to include the signature of the agent, along with date of his/her signature, certifying to the accuracy of his/her statements.

47. Information collected during the evaluation referenced in Paragraph 10 showed that the contract referenced in Paragraph 19 failed to include the signature of the agent, along with date of his/her signature, certifying to the accuracy of his/her statements.

48. Respondent's failure to include the certifications along with the dates of signatures, as described in Paragraphs 41 through 47, is a violation of 40 C.F.R. §§ 745.113(b)(6) 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 of 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**

It is hereby agreed and accepted by the parties, that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.
2. 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 the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
4. 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.
5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with all requirements of Section 409 of TSCA, 15 U.S.C. § 2689 and 40 C.F.R. Part 745 Subpart F.

6. 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 \$1,511 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. Part 745 Subpart F alleged in this document.

7. The effect of the settlement described in Paragraph 6, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5, above.

8. Nothing contained in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

9. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

10. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

11. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

12. Respondent agrees to comply with the applicable requirements of Section 402 of TSCA, 15 U.S.C. § 2682, and 40 C.F.R. Part 745 when undertaking renovations at target housing that have identified lead hazards.

13. In accordance with 40 C.F.R. § 745.107(a)(2) and (a)(3), Respondent agrees to disclose any known lead-based paint hazards and any available records or reports relating to the presence of lead in target housing being leased or sold.

#### **Supplemental Environmental Project**

14. In response to the violations of TSCA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by TSCA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below in Paragraphs 16 through 20, which the parties agree is intended to secure significant environmental or public health protection and improvement.

15. On July 31, 2008, Alloy Specialties conducted a Lead-based Paint Risk Assessment for multi-family, 3102-3106 Dodge Street, which identified several areas with lead-based paint hazards.

16. The SEP will be implemented at Turner Park Apartments, 3102-3106 Dodge Street, Omaha, Nebraska. This property is owned by Respondent and is target housing.

17. Respondent shall by and through a certified lead abatement contractor perform abatement activities for the Turner Park Apartments as follows:

- a) Abate the lead hazards in the windows at 3102 Dodge Street (Units 121, 124) and 3106 Dodge Street (Units 215, 202, 220). This activity includes removal of the window, abatement of lead hazards, proper disposal of lead hazards, and replacement of the window.

- b) Abate the lead hazards in the windows in at 3102 Dodge Street (3<sup>rd</sup> Floor Hallway) and 3106 Dodge Street (2<sup>nd</sup> Floor Hallway). This activity includes removal of the window, abatement of lead hazards, proper disposal of lead hazards, and replacement of the window.
- c) Remove and Replace Gutter and Downspout at 3106 Dodge Street.
- d) Remove and properly dispose lead-dust contaminated carpets at 3102 and 3106 Dodge Street.
- e) Abate, by removing and replacing, lead hazards in the baseboards of closets in 12 Units.
- f) Abate, by enclosing wall with sheetrock to include chalk sealants at 3102 Dodge (Units 121 and 124) and 3106 Dodge (Units 202, 215, and 220)
- g) Following completion of the abatement work, Respondent must have lead clearance testing performed by a certified risk assessor. The abatement work and lead clearance sampling may not be performed by the same individual or entity.

18. Lead-based paint abatement SEPs must be conducted in compliance with EPA regulations set forth at 40 C.F.R. § 745.227, including, but not limited to, the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and control of Lead-Based Paint Hazards in Housing (June, 1995, as revised in 1997), and executed by individuals certified to perform such work in accordance with the applicable EPA regulations, or where authorized, State law requirements.

19. Respondent shall expend a minimum of \$13,599 in approvable costs to perform the SEP. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

20. Respondent shall begin implementation of the SEP within forty-five (45) days of the effective date of the Final Order, and complete the SEP no later than July 31, 2009. All work required to complete the SEP shall be performed in compliance with Federal, State, and local laws and regulations.

21. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to Doug Gillespie, Nebraska Department of Health and Human Services, 301 Centennial Mall, Lincoln, Nebraska 68509, informing the State of its intent to perform a SEP and requesting procedural information pertaining the performance of the SEP.

22. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the State agency identified in Paragraph 21, above. The SEP Completion Report shall contain the following:

- (a) A detailed description of the SEP as implemented;
- (b) A description of any operating problems encountered and the solutions thereto;
- (c) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order;
- (e) A final abatement report as required by state law;
- (f) The following certification signed by Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and

complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

23. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, acceptable documentation includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

24. The SEP Completion Report shall be submitted on or before the due date to:

As to EPA:

Crystal McIntyre, WWPD/TOPE  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

As to the State:

Doug Gillespie  
Nebraska Department of Health and Human Services  
301 Centennial Mall  
Lincoln, Nebraska 68509

25. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 29, below.

26. No portion of Respondent's expenditures on the SEP required under this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for state or local income tax purposes. Additionally, for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

27. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

28. After receipt of the SEP Completion Report described in Paragraph 22, above, EPA will notify the Respondent, in writing, regarding: i) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that EPA concludes that the project has been completed satisfactorily, or (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 29, herein.

29. **Stipulated Penalties:** In the event Respondent fails to satisfactorily complete the SEP identified in Paragraphs 16 through 20, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraphs 16 through 20, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (a) Except as provided in subparagraph (b) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in an amount not to exceed \$13,599.
- (b) If the SEP is not completed in accordance with Paragraphs 16 through 20, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete the project; and (ii) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (c) In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$3,000.
- (d) If the SEP is completed in accordance with Paragraphs 16 through 20, and the Respondent spent at least 90 percent of the amount of the money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (e) If Respondent fails to timely and completely submit the SEP Completion Report required by Paragraphs 22 and 23, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until a complete report is submitted.
- (f) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

30. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

31. Respondent shall pay any stipulated penalties within fifteen (15) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be in accordance with the provisions of Paragraphs 1 and 2 of the Final Order. Interest and penalty on

any failure to pay a demanded stipulated penalty shall be calculated in accordance with Paragraph 35 of the Consent Agreement.

32. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

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

34. Any public statement, oral or written, in print, film, or other media made by Respondent making reference to the SEP shall including the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

35. **Payment Provision:** Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6, 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. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and a handling delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required.

Interest will be assessed at the rate of the United States Treasury tax and loan rate. A charge of fifteen dollars (\$15.00) will be assessed to cover the costs of debt collection, including processing and handling costs. In addition, a non-payment penalty charge of six (6) percent 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

**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. Respondent shall pay a mitigated civil penalty of \$1,511 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:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Demetra O. Salisbury  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. 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.

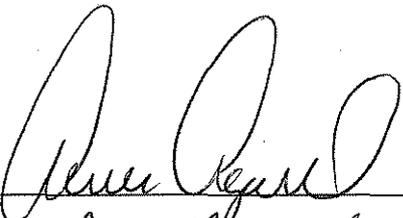
4. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

5. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas, 66101.

6. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

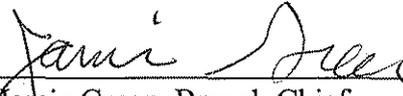
**RESPONDENT:  
DANA PARTNERSHIP**

Date: 12-26-2008

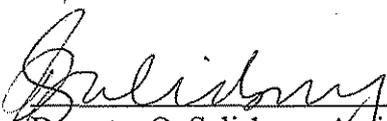
By:   
Arun Agawal  
Print Name  
Member  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 12/30/08

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

Date: Dec. 30, 2008

By:   
Demetra O. Salisbury, Assistant Regional Counsel  
Office of Regional Counsel

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

Date: January 7, 2009 Robert L. Patrick  
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Dana Partnership, Respondent  
Docket No. TSCA-07-2008-0019

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:

Demetra O. Salisbury  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Arun Agarwal, Member  
Dana Partnership  
105 N. 31st Ave  
Suite 200  
Omaha, Nebraska 68131

Dated: 1/7/09



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7