

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)

HERBERT AND RUTH JOHNSON)
St. Louis, Missouri)

Respondent)

Docket No. TSCA-07-2009-0015

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Herbert and Ruth Johnson (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 Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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 (CAFO) 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.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondents are Herbert and Ruth Johnson, of 5733 Westminster Place, St. Louis, Missouri, 63112.

Section III

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.

Section IV

General Factual Allegations

6. Respondents are, and at all times referred to herein were, "persons" within the meaning of TSCA.

7. Respondents are the "lessor(s)" as defined by 40 C.F.R. § 745.103, for the lease of residential housing units at 5312 N. Kingshighway Boulevard and 4125 N. Euclid Street in St. Louis (the Properties).

8. The Properties were constructed before 1978.

9. The residential housing units in the Properties are "target housing" as defined by 40 C.F.R. § 745.103.

Violations

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

Count 1

11. The facts stated in Paragraphs 6 through 9 above are herein incorporated.

12. Respondents entered into a contract to lease the target housing unit located at 5312 N. Kingshighway Boulevard on or about September 16, 2006.

13. Respondents failed to provide the lessee of 5312 N. Kingshighway Boulevard with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessee was obligated under contract to lease the target housing unit.

14. Respondents' failure to perform the acts indicated in paragraph 13 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

15. The facts stated in Paragraphs 6 through 9 above are herein incorporated.

16. Respondents entered into a contract to lease the target housing unit located at 4125A N. Euclid on or about December 6, 2007.

17. Respondents failed to provide the lessee of 4125A N. Euclid with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities, including provision of available records pertaining to the presence of lead-based paint and/or lead-based paint hazards before lessee was obligated under contract to lease the target housing unit.

18. Respondents' failure to perform the acts indicated in paragraph 17 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

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

20. Respondents neither admit nor deny the factual allegations set forth above.

21. Respondents waive their right to contest any issue of fact or law set forth above and their right to appeal the Final Order accompanying this Consent Agreement.

22. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

23. Respondents certify by the signing of this Consent Agreement and Final Order that they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

24. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty as specified in the Final Order.

25. Payment of this civil penalty in full 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 document.

26. In settlement of this matter, Respondents agree to complete the following lead-based paint abatement Supplemental Environmental Projects (SEP), which the parties agree are intended to secure significant environmental and/or public health benefits: Removal and replacement of nine (9) original windows from its property at 5312 N. Kingshighway Boulevard, and removal and replacement of seventeen (17) original windows from its property at 5525 Hebert Street, both to be completed in accordance with the SEP Work Plan, attached to this document and incorporated by reference. Lead-based paint abatement projects in residential

housing have characteristics of both the "Public Health" and the "Environmental Restoration and Protection" categories of SEPs, as described in EPA's SEP policy, in that such projects reduce the potential for adverse impact to public health associated with the alleged violations by the removal/mitigation of lead-based paint contaminated materials. Furthermore, the two lead abatement projects to be performed bear a strong nexus to the alleged violations, in that their successful completion reduces risks to public health associated with the alleged violations.

27. Within thirty (30) days of the effective date of the Final Order, Respondents will provide EPA with a copy of the letter sent to the Missouri Department of Health and Senior Services by the abatement contractor informing the state of Respondents' intent to perform a lead abatement SEP and requesting procedural information pertaining to performance of the SEP.

28. The total expenditure for the SEP shall be not less than \$6,502 and the SEP shall be completed no later than 90 days from effective date of the final order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

29. Respondents agree that the abatement work on the SEP projects referenced in Paragraph 26 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities. Respondents are responsible for ensuring that the entity or entities performing the SEP projects described in Paragraph 26 above receive a copy of this Consent Agreement and Final Order (CAFO) and all attachments pertaining to the SEP project, including the EPA approved SEP Work Plan. Respondents are responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

30. Within thirty (30) days of completion of the SEP, Respondents shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The final abatement report, as required by state law to be prepared by the abatement supervisor or contractor; and
- (iv) The following certification signed by Respondents:

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.

The report shall be directed to the following:

As to EPA:

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

As to the state:

Brandon Rekus
Missouri Department of Health and Senior Services
930 Wildwood
Jefferson City, MO 65109

31. If the SEP referenced in Paragraph 26 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondents shall pay a stipulated penalty in the amount of 120% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within ninety (90) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondents may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 30 above of the change in circumstances and proposing a new completion date for the SEP. Determination of the reasonableness of Respondents' extension request is at the discretion of EPA.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondents' receipt of a written demand from Complainant.

32. Respondents certify that they are not required to perform or develop the SEP by any federal, state or local law or regulation; nor are Respondents required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with

state or local requirements. Respondents further certify that Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

33. For federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

34. Any public statement, oral or written, in print, film or other media, made by Respondents making reference to the SEP shall include 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. Late Payment Provisions. 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 handling a delinquent claim. Respondents understand that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 31 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 or stipulated 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 charge 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.

36. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the

due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Section VI

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 civil penalty of Seven Hundred and Twenty-Two Dollars (\$722) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondents by name and docket number and shall be by Certified or Cashier's Check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Chris R. Dudding Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondents shall complete the Supplemental Environmental Projects in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such projects as specified in the Consent Agreement.

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

RESPONDENTS
HERBERT JOHNSON and RUTH JOHNSON

Date: 04/07/09 By: *Herbert Johnson*

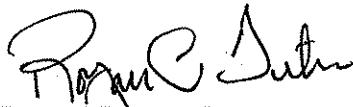
Print Name Title

Date: 04/07/09 By: *Ruth B. Johnson*

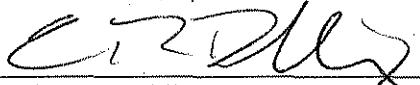
Ruth B. Johnson
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/13/09

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

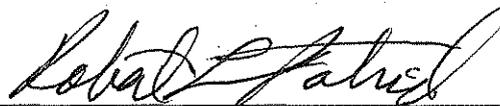
Date: 4/15/09

By: 
Chris R. Dudding
Office of Regional Counsel 

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

Date:

April 15, 2009



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

**WORK PLAN FOR HERBERT AND RUTH JOHNSON SUPPLEMENTAL
ENVIRONMENTAL ABATEMENT PROJECTS**

Herbert and Ruth Johnson (the Johnsons) propose to perform the following two abatement projects in conformance with the Supplemental Environmental Project policies of EPA as a part of the settlement agreement between the Johnsons and EPA. Each project will be completed by a certified lead abatement contractor as a lead abatement project in accordance with the work practice standards set forth in the Missouri state regulations at 19 CSR 30-70-630, and performed in conformance with all other applicable Federal, State and Local laws and regulations.

Projects to be Completed

5312 N. Kingshighway Boulevard, St. Louis, MO. This building was built in 1921 and contains one unit. Pursuant to the bids attached as Exhibit A of this letter, the Johnsons will perform an abatement project consisting of removing nine (9) original wooden windows in the building and replacing them with nine (9) thermal-insulated vinyl windows. The windows to be replaced will be documented via a representative photograph of at least one window to be replaced, which the Johnsons will provide to the EPA contact listed in the Consent Agreement prior to beginning work on the project, along with a signed statement that the window in the photograph is representative of all the windows to be replaced in the unit. In addition, upon completion of the project, the Johnsons will provide a copy of the abatement contractor's abatement completion report required by Missouri law, within ten (10) days of receiving the report. The projected cost of this abatement project is \$2,700.00.

The Johnsons anticipate completing this abatement project on or before
_____ (insert date).

5525 Hebert Street, St. Louis, MO. This building was built in 1924 and contains multiple units. Pursuant to the bids attached as Exhibit A of this letter, the Johnsons will perform an abatement project consisting of removing seventeen (17) original wooden windows in the building and replacing them with seventeen (17) thermal-insulated vinyl windows. The windows to be replaced will be documented via a representative photograph of at least one window to be replaced, which the Johnsons will provide to the EPA contact listed in the Consent Agreement prior to beginning work on the project, along with a signed statement that the window in the photograph is representative of all the windows to be replaced in the unit. In addition, upon completion of the project, the Johnsons will provide a copy of the abatement contractor's abatement completion report required by Missouri law, within ten (10) days of receiving the report. The projected cost of this abatement project is \$4,100.00.

The Johnsons anticipate completing this abatement project on or before
_____ (insert date).

Overview of Contractor Requirements

The Missouri state regulation at 19 CSR 30-70-630 governing Lead Abatement Work Practice Standards applies to each of the two projects described above. At least ten (10) days prior to the onset of the lead abatement projects, the lead abatement contractor or contractors retained by the Johnsons to perform each of the two projects described above shall provide notification to the Missouri Department of Health Office of Lead Licensing and Accreditation of the project as required by 19 CSR 30-70-630(4), along with a copy of the Occupant Protection Plan required by 19 CSR 30-70-630(7). The Johnsons will ensure that a copy of this notification is supplied to the EPA contact identified in the Consent Agreement and Final Order (CAFO).

Within twenty (20) days of completion of each project described above, a post-abatement project report shall be provided to the Johnsons by the abatement contractor, as required by 19 CSR 30-70-630(8). This report shall include the following information:

- 1) The project location and address;
- 2) The actual start and completion dates of the abatement project;
- 3) The name, address, telephone number and license number of the contractor conducting the lead abatement project;
- 4) The name and license number of each lead abatement supervisor and/or project designer;
- 5) The name and license number of each lead abatement worker;
- 6) The name and license number of each lead inspector or risk assessor responsible for clearance testing;¹
- 7) The date and the results of clearance testing, and the name of each NLLAP-accredited laboratory that conducted the analyses; and
- 8) A detailed written description of the lead abatement project, including abatement methods used, locations of rooms and/or components where abatement occurred, and the reason for selecting particular abatement methods for each component.

A copy of this project report shall be provided by the Johnsons to the EPA contact specified in the CAFO.

Funding for SEP Projects

The funding for these abatement projects is in no way controlled by EPA nor will EPA gain any resources as a result of such projects. The Johnsons will not use any federal funds or grants to perform these abatement projects.

¹ For this project to be credited as a SEP by EPA, the required post-completion clearance testing may not be performed by the certified lead based paint abatement contractor performing the work, but must be performed by an unaffiliated lead risk assessor or inspector.

Conclusion

The Johnsons propose to perform the above referenced abatement projects at 5312 N. Kingshighway Boulevard and 5525 Hebert Street in St. Louis, Missouri, at a total cost of \$6,800.00. The Johnsons are responsible for ensuring that the entity or entities performing the abatement projects referenced above receive a copy of the CAFO and all attachments pertaining to the projects, including this SEP Work Plan. Failure to ensure completion of the projects as described in this Work Plan or to expend at least \$6502.00 on the projects may result in the assessment of stipulated penalties as provided in the CAFO.

Signed,



Herbert Johnson

04/07/09

Date



Ruth Johnson

04/07/09

Date

IN THE MATTER OF Herbert and Ruth Johnson, Respondents
Docket No. TSCA-07-2009-0015

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:

Chris R. Dudding
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:

Herbert and/or Ruth Johnson
5733 Westminister Place
St. Louis, Missouri 63112

Dated: 4/16/09


Kathy Robinson
Hearing Clerk, Region 7