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	)	
	)	
Kohner Properties, Incorporated	)	Docket No. TSCA-07-2004-0135
Clayton, Missouri	)	
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Kohner Properties, 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, Radiation, Asbestos Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent is Kohner Properties, Incorporated, 7730 Forsyth Avenue, Suite 300, Clayton, Missouri 63105.

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 Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

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

8. Respondent is an "agent" as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Westwood Apartments, L.P. to represent Westwood Apartments, L.P. for the purpose of leasing Westwood Apartments.

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

10. Information collected shows that Respondent entered into a contract to lease 7840 Everett, Apartment 12 on June 15, 2001.

11. Information collected shows that Respondent, either on an attachment or within the lease contract, failed to include a statement by the lessee affirming receipt of the information set out in 40 CFR § 745.113(b)(2) and 40 CFR § 745.113(b)(3) and an EPA-approved lead hazard information pamphlet.

12. Respondent's failure to include, either on an attachment or within the lease contract, a statement by the Lessee affirming receipt of the information set out in 40 CFR § 745.113(b)(2) and 40 CFR § 745.113(b)(3) and the EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.113(b)(4) and 745.115(a), 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. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

14. Respondent admits 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 EPA 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 Thousand and Five Hundred Dollars ($5,500) 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, 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 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.

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 Five Thousand and Five Hundred Dollars ($5,500) 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
   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
   Region 7
   901 N. 5th Street
   Kansas City, Kansas 66101; and

   Rupert G. Thomas, Attorney
   Office of Regional Counsel
   U.S. Environmental Protection Agency
   Region 7
   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
KOHNER PROPERTIES, INCORPORATED

Date: 2/18/04 By: Marcia Ors

Marcia Ors VP Property Mgmt
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/24/04 By: Lynn M Slugantz
Lynn Slugantz, Acting Chief
Radiation, Asbestos, Lead and Indoor Programs Branch

Date: 02/24/04 By: Rupert Thomas
Rupert Thomas, Attorney
Office of Regional Counsel

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

Date: Feb. 25, 2004

Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer
EPA, Region 7

IN THE MATTER OF Kohner Properties, Incorporated, Respondent
Docket No. TSCA-07-2004-0135

CERTIFICATE OF SERVICE

I certify that 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:

Rupert G. Thomas
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Marcia Oris
Vice President of Property Management
Kohner Properties, Inc.
7730 Forsyth, Suite 300
Clayton, Missouri 63105

Dated: 2/26/04

Kathy Robinson
Kathy Robinson
Regional Hearing Clerk