



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

James B. Witkin, Esq.
Linowes and Blocher, LLP
One Park Place, Suite 585
Annapolis, MD 21401

SEP 18 2017

Re: The Estate of Anson Smith New Owner Self Disclosure
Notice of Determination, Docket Number TSCA-03-2017-6000

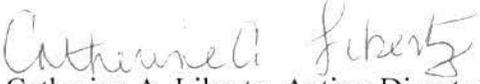
Dear Mr. Witkin:

By letter dated December 12, 2016, the Estate of Anson Smith ("Estate") self-disclosed to the United States Environmental Protection Agency, Region III ("EPA"), potential violations of Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2689, and Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA") Act, 42 U.S.C §4852d, that occurred at nine properties housing 62 rental units now owned by the Estate and located in Frederick, Maryland ("Facilities"). Enclosed is a Notice of Determination ("NOD") that EPA has issued pursuant to EPA's revised final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg.19618 (April 11, 2000) ("Self-Disclosure Policy"), as supplemented by EPA's policy entitled "Interim Approach to Applying the Audit Policy to New Owners," 73 Fed. Reg. 44991 (August 1, 2008) ("New Owner Policy").

After reviewing the supporting information that the Estate provided about the Facilities, EPA has determined that the Estate has met all the criteria of the Self-Disclosure Policy and New Owner Policy and qualifies for 100% mitigation of the gravity-based component of the penalty. The total gravity-based civil penalty for the disclosed TSCA and RLBPHRA violations would be \$1,402,006 if such violations had not been self-disclosed. EPA also waived the economic benefit component of the civil penalty because the violations occurred prior to the Estate's ownership and because the economic benefit has determined to be insignificant. Please be aware that EPA reserves its rights to initiate an enforcement action and seek assessment of a civil penalty concerning the violations the Estate disclosed if EPA subsequently determines that any information the Estate provided to EPA, upon which the aforementioned civil penalty mitigation was based, was materially false or inaccurate.

EPA appreciates the Estate's efforts to identify and disclose its violations. In the future, please ensure that the Estate fulfills its reporting obligations under Section 409 of TSCA, 15 U.S.C. § 2689, and Section 1018 of the RLBHPRA, 42 U.S.C § 4852d. If you have any questions concerning the NOD, please do not hesitate to contact Craig Yussen (215) 814-2151.

Sincerely,


Catherine A. Libertz, Acting Director
Land and Chemicals Division

Enclosure: Notice of Determination

cc: Megan Satinsky-Roberts
Catherine McCool
Craig Yussen

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF: :

Docket No. TSCA-03-2017-6000

The Estate of Anson Smith :
c/o Linowes and Blocher, LLP :
One Park Place :
Suite 585 :
Annapolis, Maryland 21401 :

NOTICE OF DETERMINATION

Under Section 16(a) of the Toxic Substance
and Control Act (TSCA) 15 U.S.C.
§ 2615(a)

24 South Market Street :
Frederick, Maryland 21701 :

10 South Market Street :
Frederick, Maryland 21701 :

17-19 North Market Street :
Frederick, Maryland 21701 :

205-207 North Market Street :
Frederick, Maryland 21701 :

11-13 East Patrick Street :
Frederick, Maryland 21701 :

24-26 East Patrick Street :
Frederick, Maryland 21701 :

100-102 East Patrick Street :
Frederick, Maryland 21701 :

116-118 East Patrick Street :
Frederick, Maryland 21701 :

213-215 North Market Street :
Frederick, Maryland 21701 :

FACILITIES

2017 SEP 19 PM 12:09
RECEIVED

NOTICE OF DETERMINATION

Pursuant to EPA's revised final policy entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) ("Audit Policy"), as supplemented by EPA's policy entitled "Interim Approach to Applying the Audit Policy to New Owners," 73 Fed. Reg. 44991 (August 1, 2008) ("New Owner Policy"), the United States Environmental Protection Agency, Region III ("EPA"), hereby issues this Notice of Determination ("NOD") to The Estate of Anson Smith ("Estate") regarding violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), 42 U.S.C. § 4852d, and Sections 16 and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615(a) and 2689, and their implementing regulations at 40 C.F.R. Part 745, Subpart F ("Disclosure Rule") at nine properties housing 62 rental units located in Fredrick, Maryland ("Facilities"). Failure to comply with RLBPHRA Section 1018, 42 U.S.C. § 4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of TSCA Section 409, 15 U.S.C. § 2689. Pursuant to TSCA Section 16, 15 U.S.C. § 2615, violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties. The violations that are the subject of this NOD were voluntarily disclosed to EPA by letter dated December 12, 2016.

I. NEW OWNER COMPLIANCE POLICY

In order to encourage regulated entities that acquire new facilities to conduct voluntary compliance evaluations and to voluntarily discover, disclose, and correct violations of environmental requirements, EPA promulgated the New Owner Policy. As an incentive for new businesses owners to participate in the New Owner Policy voluntary disclosure process, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be

assessed for violations that are voluntarily disclosed in compliance with the conditions specified in the New Owner Policy as well as the Audit Policy. The conditions of the Audit Policy are as follows:

- (1) Systematic Discovery;
- (2) Voluntary Discovery;
- (3) Prompt Disclosure;
- (4) Independent Discovery;
- (5) Prompt Correction;
- (6) Prevent Recurrence;
- (7) No Repeat Violations;
- (8) Other Violations Excluded;
- (9) Cooperation;

To qualify as a “new owner” under the New Owner Policy:

- (1) Prior to the transaction, the disclosing entity must not have been responsible for environmental compliance at the facilities in question, not have caused the violations being disclosed, and could not have been able to prevent the occurrence of the identified violations;
- (2) The identified violations must have originated with the previous owner; and
- (3) Prior to the closing of the transaction, neither the new owner nor the previous owner had the largest ownership share in the other, nor did either owner have any parent corporations in common.

Pursuant to the Audit Policy and New Owner Policy, EPA may eliminate or reduce gravity-based penalties up to 100% if the disclosing entity satisfies all of the conditions

described above. The Policies provide up to 100% reduction of the penalty's gravity component for violations discovered either through a timely environmental audit or via pre-acquisition due diligence. Additionally, pursuant to the New Owner Policy, EPA will not assess a penalty for economic benefit against a new owner for violations that occurred prior to the date of acquisition. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit associated with avoided operation and maintenance costs that may have been realized as a result of such violations from the date of the new owner's acquisition of the facility until the correction of the violation. In its enforcement discretion, EPA may also waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the Audit Policy and New Owner Policy, and based upon the information and representations the Estate provided in its disclosure letter, dated December 12, 2016, follow up letters and email correspondence, EPA makes the following findings of fact and conclusions of law:

- A. Pursuant to Section A of the New Owner Policy, a person will be considered a "new owner" if:
 - (a) prior to the transaction, it was not responsible for environmental compliance at the facility which is the subject of the disclosure, did not cause the violations disclosed, and could not have prevented their occurrence;
 - (b) the violation that is subject to the disclosure originated with the prior owner; and
 - (c) it and the prior owner did not share a corporate parent.
- B. Anson Smith ("the Decedent") held membership interest in nine Limited Liability Companies ("LLCs") that held the title to the Facilities and managed them himself through The Anson Smith Management Company, LLC ("Management Company"). The Decedent was the sole employee.

- C. The Decedent acquired the Facilities between January 23, 1985, and March 31, 2004. Please see the list of the properties attached to this NOD (“Attachment A”).
- D. The Decedent passed away on April 28, 2016, and his membership interest in the nine property-holding LLCs that held the title to the Facilities then passed into the Estate (please see Attachment A).
- E. Prior to the acquisition, the Estate was not responsible for environmental compliance at the Facilities, did not cause the violations disclosed, and could not have prevented their occurrence.
- F. The Estate and the Decedent did not share a corporate parent.
- G. Based upon a review of the information the Estate submitted and EPA’s subsequent analysis, EPA has concluded that the Estate has complied with all three (3) conditions of the New Owner Policy as follows:
1. Not responsible for previous environmental compliance: The Estate was not involved in or responsible for the operation of the Facilities prior to Anson Smith’s death, did not cause the violations disclosed, and could not have prevented their occurrence.
 2. Violations originated with the previous owner: The Estate did not exist until the Decedent’s death on April 28, 2016, was not responsible for environmental compliance at the Facilities, did not cause the violations disclosed, and could not have prevented their occurrence. The Estate has not entered into any new residential leases at any of the properties.
 3. Lack of common ownership: The Estate did not share common ownership with the LLCs and does not have a common parent corporation.
- H. The Estate is an “owner” as that term is defined by 40 C.F.R. § 745.103.

- I. The Facilities are considered “target housing” as that term is defined by 40 C.F.R. § 745.103.
- J. The Estate is the “lessor” as that term is defined by 40 C.F.R. § 745.103.
- K. In its December 12, 2016 disclosure letter, the Estate disclosed potential violations of Section 1018 of the RLBPHRA, 42 U.S.C § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, for its failure to include as an attachment or within the contract to lease target housing, the Lead Warning Statement as required by 40 C.F.R. § 745.113(b)(1), for the Facilities. The violations were on-going, beginning, for eight of the Facilities, on the date they were acquired (please refer to Attachment A) and continuing until April 11, 2017, when the Estate certified that the violations were corrected. The violations were on-going for the 205 – 207 North Market Street Facility that was acquired on December 12, 1985, beginning on September 6, 1996, the effective date of the Disclosure Rule, until April 11, 2017, when the Estate certified that the violations were corrected.
- L. The Estate also disclosed that it did not provide a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint in the lease agreements with lessees at the Facilities, as required by 40 C.F.R. § 745.113(b)(2). The violations were on-going, beginning, for eight of the Facilities, the date they were acquired (please refer to Attachment A) until April 11, 2017, when the Estate certified that the violations were corrected. The violations were on-going for the 205 – 207 North Market Street Facility that was acquired on December 23, 1985, beginning on September 6, 1996, the effective date of the Disclosure Rule, until April 11, 2017, when the Estate certified that the violations were corrected.
- M. The Estate disclosed that it did not include as an attachment or within the agreements of sale or leases for the Facilities, a statement by the lessees affirming receipt of the information set out in

accordance with 40 C.F.R. § 745.113(b)(2) and (b)(3), as required by 40 C.F.R. § 745.113(b)(4). The violations were on-going, beginning, for eight of the Facilities, the date they were acquired (please refer to Attachment A) until April 11, 2017, when the Estate certified that the violations were corrected. The violations were on-going for the 205 – 207 North Market Street Facility that was acquired on December 23, 1985, beginning on September 6, 1996, the effective date of the Disclosure Rule, until April 11, 2017, when the Estate certified that the violations were corrected.

- N. Failure to comply with Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.
- O. Based upon a review of the information the Estate submitted and EPA's subsequent analysis, EPA has concluded that Estate has complied with all nine (9) conditions of the Audit Policy, as follows:
1. **Systematic Discovery:** Thomas B. Dwyer was appointed Personal Representative of the Estate by the Orphan's Court for Montgomery County, Maryland on September 8, 2016. As part of his duties, he conducted a systematic audit of the lead paint compliance procedures, consulted counsel, and discovered that the prior owner did not comply with the disclosure requirements of Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, for the Facilities.
 2. **Voluntary Discovery:** The Estate discovered the violations of Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, voluntarily through due-diligence activities and not as a result of a legally-mandated monitoring or

sampling requirement prescribed by statute, regulation, permit, or judicial or administrative order, or consent agreement.

3. Prompt Disclosure: The Estate completed the audit on December 1, 2016, and disclosed the violations on December 12, 2016, which is within 45 days of their discovery.

4. Discovery and Disclosure Independent of Government or Third Party

Plaintiff: The Estate's discovery and disclosure of the potential violations occurred prior to the commencement or issuance of any federal, state, or local inspection, investigation, information request, notice of citizen suit, complaint by a third party, report of the violation by a "whistleblower," or imminent discovery of the violation by a regulatory agency.

5. Correction and Remediation: The Estate corrected the violations of Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, within an acceptable timeframe.

6. Prevent Recurrence: The Estate is working with environmental consultants to implement procedures to prevent the recurrence of the violations.

7. No Repeat Violations: As of the date of its initial disclosure to EPA, December 12, 2016, the Estate had not received notice of any violations of Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, at the Facilities.

8. Other Violations Excluded: The disclosed violations did not result in actual serious harm and did not present a risk of imminent and substantial endangerment to human health or the environment, nor did the disclosed violations violate the specific

terms of any judicial or administrative order or consent agreement.

9. **Cooperation:** The Estate has cooperated with EPA and has provided such information as necessary and requested by EPA to determine the applicability of the New Owner Policy and Audit Policy.

IV. EPA'S DETERMINATION

Pursuant to the Audit Policy and the New Owner Policy, and based upon the information the Estate provided in its disclosure letter, follow up letters and email correspondence with EPA, EPA makes the following determination concerning the disclosure identified above:

- A. The Estate violated Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, by failing to include the Lead Warning Statement as an attachment or within the contracts to lease target housing, as required by 40 C.F.R. § 745.113(b)(1).
- B. The Estate violated Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, by failing to provide a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint in the lease agreements with lessees, as required by 40 C.F.R. § 745.113(b)(2).
- C. The Estate violated Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, by failing to include as an attachment or within the agreements of sale or lease a statement by the lessees affirming receipt of the information set out in accordance with 40 C.F.R. § 745.113(b)(2) and (b)(3), as required by 40 C.F.R. § 745.113(b)(4).
- D. Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f), authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, in the maximum amount of \$16,773 for each violation of Section 409 of TSCA, 15

U.S.C. § 2689, pursuant to the *Civil Monetary Penalty Adjustment Rule*, 40 C.F.R. Part 19. The Estate's violations were on-going for eight of the facilities, commencing from the date the Facilities were acquired until April 11, 2017, when the Estate certified that the violations were corrected. The violations were on-going for the 205 – 207 North Market Street Facility that was acquired on December 23, 1985, beginning on September 6, 1996, the effective date of the Disclosure Rule, until April 11, 2017, when the Estate certified that the violations were corrected.

- E. In calculating the civil penalty to be assessed for a violation of Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, EPA considers the factors listed in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), with specific reference to EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* ("ERP"), dated December 2007. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors referenced above to particular cases. Based upon the information the Estate provided, EPA's consideration of the facts of this case and the ERP, EPA has determined that a gravity-based civil penalty in the amount of \$1,402,006 would be appropriate for the above violations of Section 1018 of RLBPHRA, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689.
- F. Based upon information the Estate provided, EPA has determined that the Estate has met all of the conditions of the New Owner Policy and the Audit Policy and qualifies for a 100% reduction in the gravity-based component of the civil penalty for the disclosed violations. As a new owner, the Estate would not have yielded any economic benefit. Instead, any economic benefit would have been accrued by the Management Company's non-compliance with the regulations. Therefore, as is consistent with the New Owner Policy, EPA will not assess a gravity-based civil

penalty against the Estate for the aforementioned violations.

IV. RESERVATION OF RIGHTS

- A. This NOD resolves only the potential claims for civil penalties pursuant to TSCA for the violations alleged herein. Nothing in this NOD is intended to be nor shall be construed to operate in any way to resolve criminal liability, if any, of the Estate. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of TSCA or any other environmental law.
- B. This NOD shall not relieve the Estate of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. This NOD does not constitute a waiver, suspension, or modification of the requirements of TSCA or any regulations promulgated there under.
- C. EPA reserves the right to undertake any action against any person, including the Estate, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or the environment.
- D. EPA reserves the right to revoke this NOD and, thereby, render such NOD null and void if and to the extent that any information or certification the Estate provided, upon which any civil penalty mitigation granted herein for such violations was based, was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any and all civil penalties for any violations described herein. Such revocation shall be in writing and shall become effective upon receipt by the Estate.

In issuing this NOD, EPA seeks to promote self-auditing by the Estate, and expects the Estate to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the
U.S. Environmental Protection Agency, Region III**

Date: 9-16-17

By: Catherine A. Libertz
Catherine A. Libertz, Acting Director
Land and Chemicals Division

ATTACHMENT A

| PROPERTY | OWNERSHIP ENTITY | NUMBER OF RESIDENTIAL UNITS | DATE ACQUIRED BY DECEDENT |
|-------------------------------|-------------------------------|------------------------------------|----------------------------------|
| 24 South Market Street | 24 S. Market St., LLC | 4 | 2/10/1999 |
| 10 South Market Street | 10 South Market St., LLC | 4 | 3/31/2004 |
| 17 - 19 North Market Street | 17 & 19 N. Market St., LLC | 4 | 3/25/1999 |
| 205 - 207 North Market Street | S.L. - 2 Properties, LLP | 8 | 12/23/1985 |
| 11 - 13 East Patrick Street | 13 E. Patrick St., LLC | 8 | 12/22/2000 |
| 24 - 26 East Patrick Street | 26 E. Patrick St., LLC | 10 | 2/7/2000 |
| 100 - 102 East Patrick Street | 100 & 102 E. Patrick St., LLC | 8 | 1/8/1999 |
| 116 - 118 East Patrick Street | 116 - 118 E. Patrick St., LLC | 11 | 1/12/2000 |
| 213 - 215 North Market Street | 213 - 215 N. Market St., LLC | 5 | 1/4/2002 |