

FILED

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U.S. EPA REGION 5
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2025-0011
)	
Edgar Espinoza)	Proceeding to Assess a Civil
Chicago, Illinois,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Edgar Espinoza, an individual doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor

denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, EPA promulgated regulations at 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 (Disclosure Rule) pursuant to 42 U.S.C. § 4852d.

11. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

12. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

13. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

14. 40 C.F.R. §§ 745.113(b)(1) requires that each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following

language: *“Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”*

15. 40 C.F.R. § 745.113(b)(2) requires that each contract to lease target housing include, as an attachment to the contract or within the contract, a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence.

16. 40 C.F.R. § 745.113(b)(3) requires that each contract to lease target housing include, as an attachment to the contract or within the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist.

17. 40 C.F.R. § 745.113(b)(4) requires that each contract to lease target housing include, as an attachment to the contract or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet.

18. 40 C.F.R. § 745.113(b)(6) requires that each contract to lease target housing include, as an attachment to the contract or within the contract, signatures of the lessor and lessee(s) certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

19. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

20. Under 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, the Administrator of EPA may assess a civil administrative penalty of up to \$21,699 for each violation of 42 U.S.C. § 4852d and Section 409 of TSCA, 15 U.S.C. § 2689, that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023.

Factual Allegations and Alleged Violations

21. Between in or about 2013 and in or about May 2024, Respondent owned a two-story multi-family dwelling located at 2124 N. LaPorte Avenue, Chicago, Illinois (Respondent's property).

22. Respondent's property was constructed in or about 1923.

23. Respondent's property is "target housing" as defined in 40 C.F.R. § 745.103.

24. On or about November 12, 2021, Respondent, either directly or through his authorized agent, entered into a lease agreement (contract) with an individual (hereinafter identified as "Tenant A") for the lease of the second-floor apartment unit within Respondent's property.

25. The contract referred to in paragraph 24, above, covered a term of occupancy greater than 100 days.

26. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 21, above, for lease.

27. Under the terms of the contract referred to in paragraph 24, above, Tenant A was required to pay rent in the amount of \$1,400 per month for the one-year term of occupancy.

28. Tenant A, the individual who signed the contract to pay rent in exchange for occupancy of the target housing referred to in paragraph 21, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

**Count 1
(Failure to Include Lead Warning Statement)**

29. On or about November 12, 2021, Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent's property at

2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), as required under 40 C.F.R. § 745.113(b)(1).

30. Respondent's failure to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), constitutes a violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 2
(Failure to Include Statement Re: Lead-Based Paint)

31. On or about November 12, 2021, Respondent failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), as required under 40 C.F.R. § 745.113(b)(2).

32. Respondent's failure to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), constitutes a violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 3
**(Failure to Include List of Lead-based Paint Reports or
Statement that No Such Reports Exist)**

33. On or about November 12, 2021, Respondent failed to include either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), a list of any records or reports of lead-based paint, or

to provide a statement that no such records or reports exist to each prospective tenant of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), as required under 40 C.F.R. § 745.113(b)(3).

34. Respondent's failure to include either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), a list of any records or reports of lead-based paint, or to provide a statement that no such records or reports exist to each prospective tenant of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), constitutes a violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 4
(Failure to Include Lessee's Statement Affirming
Receipt of Lead Hazard Information Pamphlet)

35. On or about November 12, 2021, Respondent failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2686, either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), as required under 40 C.F.R. § 745.113(b)(4).

36. Respondent's failure to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2686, either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), constitutes a violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 5
(Failure to Include Signatures of Lessee and Lessor Certifying to Accuracy of Statements)

37. On or about November 12, 2021, Respondent failed to include signatures of the lessor and lessee(s) certifying to the accuracy of their statements, to the best of their knowledge, either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), as required under 40 C.F.R. § 745.113(b)(6).

38. Respondent's failure to include signatures of the lessor and lessee(s) certifying to the accuracy of their statements, to the best of their knowledge, either within the contract or as an attachment to the contract for the lease of Respondent's property at 2124 N. LaPorte Avenue, Chicago, Illinois (second floor apartment unit), constitutes a violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

39. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is **five thousand dollars (\$5,000)**. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007.

40. Respondent agrees to pay a civil penalty in the amount of **\$5,000** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date"). EPA conducted an analysis of Respondent's financial information and determined Respondent has a limited ability to pay. Consequently, in accordance with applicable law, EPA determined that the Assessed Penalty is an appropriate

amount to settle this action.

41. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

42. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, **TSCA-05-2025-0011**,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Craig Meredith
Pesticides and Toxics Compliance Section
U.S. Environmental Protection Agency, Region 5
Meredith.craig@epa.gov
and
R5LEECAB@epa.gov

James Cha
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Cha.james@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and

identified with the appropriate docket number and Respondent's name.

43. Interest, Charges, and Penalties on Late Payments. Pursuant to 15 U.S.C. § 2615, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed each subsequent thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty, as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, and other charges, that remain delinquent more than

ninety (90) days.

44. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions may include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
- d. Per 15 U.S.C. § 2615(a), the Attorney General will bring a civil action in the appropriate district court to recover the full remaining balance of the debt plus interest. In such an action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

General Provisions

45. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: cha.james@epa.gov (for Complainant), and kandahlaw@gmail.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

46. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability under Section 409 of TSCA, 15 U.S.C. § 2689, for federal civil penalties for the violations alleged in the CAFO.

47. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

48. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state and local laws.

49. Respondent certifies that he is complying with the Lead Act and the Disclosure Rule.

50. The terms of this CAFO bind Respondent, and his/her successors and assigns.

51. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

52. Each party agrees to bear its own costs and attorneys fees in this action.

53. This CAFO constitutes the entire agreement between the parties.

Edgar Espinoza, Respondent


Edgar Espinoza

Nov 7, 2024
Date

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Edgar Espinoza
Docket No.: TSCA-05-2025-0011**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5