



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

FEB 09 2009

REPLY TO THE ATTENTION OF

LC-8J

Federal Express  
Tracking No.827436013364

Frank C. Kotouch, Jr.  
d/b/a A & F Rentals  
29 E. Glenaven Ave.  
Youngstown, Ohio 44507-1304

Frank C. Kotouch, Jr., d/b/a A & F Rentals TSCA-05-2009-0005 <sup>2b.</sup>

Dear Mr. Kotouch:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on February 9, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,500.00 is to be paid in the manner described in paragraphs 30 and 31. Please be certain that the number **BD 2750967X002** and the docket number are written on both the transmittal letter and on the check. Payment is due by March 11, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Scott Cooper".

Scott Cooper

Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)



and to the terms of this CAFO.

7. Respondent entered into a Tolling Agreement on September 10, 2008 to toll the statute of limitations, and allow the parties the opportunity to settle the alleged violations specified in this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. 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.

### **Statutory and Regulatory Background**

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; 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; 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; 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*; and, the signatures and dates of signature of the lessor and lessee certifying the accuracy of their statements.

16. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule violates 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).

17. Section 1018(b)(5) of the Lead Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f) authorize the EPA Administrator to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

18. Between at least November 2003 and February 2004, Respondent owned

residential dwellings in Youngstown, Ohio at 29 East Glenaven Avenue, 551 Parkcliff Avenue, 21 East Glenaven Avenue, and 25 East Glenaven Avenue (Respondent's properties).

19. Respondent's properties are "target housing" as defined in 40 C.F.R. § 745.103.

20. On the following dates, Respondent entered into the following four written lease agreements (contracts) with individuals for the lease of Respondent's properties:

Address	Date of Lease
29 East Glenaven Avenue	1-5-2004
551 Parkcliff Avenue	2-10-2004
21 East Glenaven Avenue	11-3-2003
25 East Glenaven Avenue	11-1-2003

21. Each of the four contracts referred to in paragraph 20, above, covered a term of occupancy greater than 100 days.

22. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 20, above, for lease.

23. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 20, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

24. 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 properties in Youngstown, Ohio at 29 East Glenaven Avenue, 551 Parkcliff Avenue, 21 East Glenaven Avenue, and 25 East Glenaven Avenue, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. 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 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 properties in Youngstown, Ohio at 29 East Glenaven Avenue, 551 Parkcliff Avenue, 21 East Glenaven Avenue, and 25 East Glenaven Avenue, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondent's properties in Youngstown, Ohio at 29 East Glenaven Avenue, 551 Parkcliff Avenue, 21 East Glenaven Avenue, and 25 East Glenaven Avenue, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. 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. § 2696, either within the contract or as an attachment to the contract for the lease of Respondent's properties in Youngstown, Ohio at 29 East Glenaven Avenue, 551 Parkcliff Avenue, 21 East Glenaven Avenue, and 25 East Glenaven Avenue, in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. Respondent failed to include the signatures of the lessor, and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Respondent's properties in Youngstown, Ohio at 29 East Glenaven Avenue, 551 Parkcliff Avenue, 21 East Glenaven Avenue, and 25 East Glenaven Avenue, in 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

29. 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 \$1,500. 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, and the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* dated December 2007.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,500 civil penalty for the TSCA violations. The payment may be made in two installments, plus interest at a rate of 3 percent per annum, on the dates and in the amounts shown on the payment schedule attached as Exhibit A. Respondent may prepay the \$1,500 civil penalty plus accrued interest to date of such payment without being subject to a prepayment penalty. Each payment shall be by check payable to the "Treasurer, United States of America," and mailed to the following address:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must state the case title "Frank C. Kotouch, Jr., d/b/a A & F Rentals," the docket number of this CAFO, and the billing document number.

31. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

Frederick Brown (LC-8J)  
Pesticides and Toxics Enforcement Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

Tamara Carnovsky (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not pay the civil penalty timely, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

35. Respondent agrees to register for and complete the *Lead Abatement Worker Course* provided by the Mahoning County General Health District during March 2009, and take the State licensing exam. If the course is not offered in March, Respondent will register for the



next available course, and complete it. Respondent agrees to pay any associated test fees, including licensing fee and exam.

36. No later than two weeks after Respondent completes the course, Respondent agrees to mail a copy of the *Lead Worker Certificate* proving Respondent's completion of the *Lead Abatement Worker Course* to:

Tamara Carnovsky (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

39. 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.

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

41. The terms of this CAFO bind Respondent, and his successors and assigns.

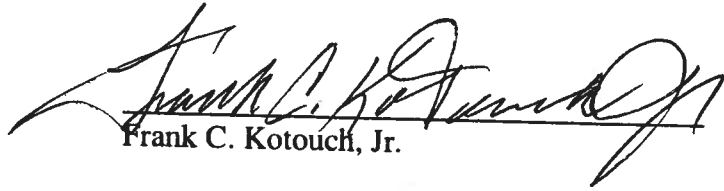
42. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and attorney's fees in this action.

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

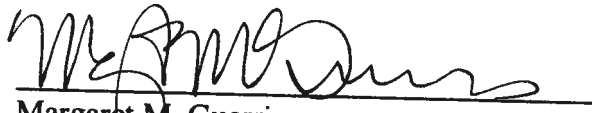
**Frank C. Kotouch, Jr., d/b/a A & F Rentals, Respondent**

1-12-09  
Date

  
Frank C. Kotouch, Jr.

**United States Environmental Protection Agency, Complainant**

2/4/09  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemical Division

**In the Matter of:**  
**Frank C. Kotouch, Jr., d/b/a A & F Rentals**  
**Docket No. TSCA-05-2009-0005**

**RECEIVED**  
FEB - 9 2009

**Final Order**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

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.

2/4/09  
Date

Walter W. Kovalick  
for  
Bharat Mathur  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

**Exhibit A**

Principal Sum = \$1,500.00  
Interest 3% per annum

<u>Payment</u>	<u>Principal</u>	<u>Remaining</u>	<u>Interest</u>	<u>Total</u>
3-11-09	\$750.00	\$750.00	\$0.00	\$750.00
8-8-09	\$750.00	\$0	\$9.25	\$759.25


**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Frank C. Kotouch, Jr., d/b/a A & F Rentals, was filed on February 6, 2009, with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Federal Express, tracking number 827436013364, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Frank C. Kotouch, Jr.  
d/b/a A & F Rentals  
29 E. Glenaven Ave.  
Youngstown, Ohio 44507-1304

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Tamara Carnovsky, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. TSCA-05-2009-0005

**RECEIVED**  
FEB - 9 2009

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**