EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This fo	orm was originated by:	L. Ramalho		<u> </u>		1 <u>2/22/1</u> 0
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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

In the Matter of:

John V. Kane, IV

Route 3, Box 246B : U.S. EPA Docket No.

Bridgeport, WV 26330 : TSCA-03-2010-0323

:

RESPONDENT, : Proceeding under Sections 16(a)

and 409 of the Toxic Substances

501 S. 5th Street : Control Act (15 U.S.C. §§ 2615(a)

Clarksburg, WV 26301 : and 2689)

TARGET HOUSING.

CONSENT AGREEMENT Preliminary Statement

- 1. The Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and John V. Kane, IV ("Respondent"), wishing to settle EPA's claims for civil penalties arising from the violations alleged in the Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") issued on June 12, 2010, incorporated herein by reference, have consented to the entry of this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO"), pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22 including, but not limited to, 40 C.F.R. § 22.18(b)(2) and (3). This Consent Agreement ("CA") and the accompanying Final Order ("FO"), settle violations by Respondent of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seg. ("RLBPHRA"), and the regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F (the "Disclosure Rule"), which statutory and regulatory provisions are enforceable pursuant to Section 409 of TSCA, 15 U.S.C. § 2689.
- 2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in the Complaint and herein.
- 3. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in the Complaint or herein, except as provided in Paragraph 2, above.
- 4. For the purposes of this proceeding only, Respondent hereby expressly waives his right to a hearing on any issue of law or fact set forth in the Complaint or herein and any right to appeal the accompanying FO.

- Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

 Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
- 6. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
- 7. Respondent shall bear his own costs and attorney's fees, if any.
- 8. The provisions of this CAFO shall be binding upon Respondent.
- 9. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
- 10. Respondent certifies that he is currently in full compliance with RLBPHRA, 42 U.S.C. §§ 4851 et seq., and the Disclosure Rule codified at 40 C.F.R. Part 745.
- Nothing in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

Notice of Action to the State of West Virginia

12. EPA has given the State of West Virginia prior notice of the issuance of this CAFO.

Civil Penalty

- Respondent agrees to pay the amount of Ten Thousand Five Hundred Dollars (\$10,500.00) in satisfaction of all civil claims for penalties which Complainant may have under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in the Complaint. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
- Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
- 15. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondent.

However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

- The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
- A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
- The aforesaid settlement amount is based upon Complainant's consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which include the nature, circumstances, extent, and gravity of the violations and the violator's ability to pay, ability to continue in business, history of prior violations, and degree of culpability, and other matters as justice may require.
- 19. Respondent shall pay the civil penalty specified in paragraph 13, above, by electronic funds transfer ("EFT"), as described below, or by sending a cashier's check or certified check, made payable to the order of "United States Treasury."
 - a. Checks sent by regular US Postal Service mail delivery must be addressed to:

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

Contact: Natalie Pearson, 314-418-4087

b. Checks sent by private commercial overnight delivery service must be sent to:

U.S. EPA, Fines and Penalties U.S. Bank 1005 Convention Plaza

Mail Station SL-MO-C2-GL St. Louis, MO 63101 Contact: Natalie Pearson, 314-418-4087

c. Any EFT shall be transmitted to:

Wire Transfer

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 wire transfer message should read: "D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfer for receiving U.S. currency (also known as REX or remittance express)

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking

Physical location of U.S. Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

Contact for ACH: Jessic White (301)887-6548 or REX 1-866-234-5681

There is now an On Line Debit and Credit Card Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV Enter sfo 1.1 in the search field

Open the form and complete required fields.

All payments by Respondent shall reference his name and address and the Docket Number of this case (TSCA-03-2010-0323). At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

Regional Hearing Clerk (3RC00) EPA Region III 1650 Arch Street Philadelphia, Pennsylvania 19103-2029

and

4

Louis F. Ramalho (3RC30)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

Reservation of Rights

This CAFO shall resolve only Respondent's liability for federal civil penalties for the specific violations alleged in this CA. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This CA is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or that may be sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for any violation of law. In addition, Complainant reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CA, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

22. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for the violations alleged in this CAFO.

Other Applicable Laws

23. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on him by applicable federal, state or local law and/or regulations.

Effective Date

24. The effective date of this Consent Agreement and the attached Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III or his designee, is filed with the Regional Hearing Clerk.

Entire Agreement

This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and the attached Final Order.

Respondent:	
Date: 12-17-2010 By: John V	w 1/2n . Kane, IV
For the United States Environmental Protection	Agencx:
	Ramalho istant Regional Counsel
I recommend that the Regional Administrator, or here o.	his designee, issue the Final Order attached
Abraha	TFerdas, Director d Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

In the Matter of:

John V. Kane, IV

Route 3, Box 246B : U.S. EPA Docket No. Bridgeport, WV 26330 : TSCA-03-2010-0323

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RESPONDENT, : Proceeding under Sections 16(a)

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Clarksburg, WV 26301 : and 2689)

TARGET HOUSING.

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, John V. Kane, IV, have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), published at 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead Paint Disclosure Act"), 42 U.S.C. §§ 4851 et seq. and 40 C.F.R. Part 745, Subpart F, which authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, for violations of the Lead Paint Disclosure Act, and the Consolidated Rules of Practice, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), IT IS HEREBY

ORDERED that Respondent pay a civil penalty of Ten Thousand Five Hundred Dollars (\$10,500.00), and comply with the terms and conditions of the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 12/28/10

y: Kexie Dara

Regional Judicial Officer

United States Environmental Protection Agency

Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, Docket No. **TSCA-03-2010-0323** was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

John V. Kane, IV Route 3, Box 246B Bridgeport, WV 26330

The Honorable Spencer Nissen
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

12/28/10 Date

Louis F. Ramano

Sr. Assistant Regional Counsel

U.S. EPA - Region/III

1650 Arch Street

Philadelphia, PA 19103-2029