



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV 01 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7671 5669

Elijah King  
12823 Speedway Overlook  
East Cleveland, Ohio 44112

Elijah King TSCA-05-2012-0002

Dear Mr. King:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on November 1, 2011, with the Regional Hearing Clerk.

Based on Respondent's documented inability to pay, Complainant determined that an appropriate civil penalty to settle this action is \$0. In accordance with paragraph 28 of this CAFO, there is no assessed civil penalty.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christine Anderson".

Christine Anderson  
Pesticides and Toxic Compliance Section

Enclosures

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

**RECEIVED**

NOV - 1 2011

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**REGIONAL HEARING CLERK  
ENVIRONMENTAL  
PROTECTION AGENCY**

<b>In the Matter of:</b>	)	<b>Docket No.</b>	<b>TSCA-05-2012-0002</b>
	)		
<b>Elijah King</b>	)	<b>Proceeding to Assess a Civil</b>	
<b>East Cleveland, Ohio</b>	)	<b>Penalty Under Section 16(a) of the</b>	
	)	<b>Toxic Substances Control Act,</b>	
<b>Respondent.</b>	)	<b>15 U.S.C. § 2615(a)</b>	
_____	)		

**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 Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Elijah King, a sole proprietor doing business in the State of Ohio.

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.

### **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) 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.

15. 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).

16. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009 and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

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

17. Between at least June 11, 2007 and February 12, 2008, Respondent owned residential dwellings at 643 E. 101<sup>st</sup> Street, 1761 Cliffview, and 1005 Eddy Road, Cleveland, Ohio (Respondent's Properties).

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

19. On the following dates, Respondent entered into the following three lease

agreements (contracts) with individuals for the lease of Respondent's residential dwellings in Cleveland, Ohio:

Address	Apt.	Date of lease
643 E. 101 <sup>st</sup> Street	Upper	2/12/08
1761 Cliffview		6/11/07
1005 Eddy Road		9/7/07

20. Each of the three contracts referred to in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because he offered the target housing referred to in paragraph 19, above, for lease.

22. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in paragraph 19, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

23. 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 at 643 E. 101<sup>st</sup> Street, Upper, 1761 Cliffview, and 1005 Eddy Road in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

24. 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 at 643 E. 101<sup>st</sup> Street, Upper, 1761 Cliffview, and 1005 Eddy Road in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

25. 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 at 643 E. 101<sup>st</sup> Street, Upper, 1761 Cliffview, and 1005 Eddy Road in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

26. 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 at 643 E. 101<sup>st</sup> Street, Upper, 1761 Cliffview, and 1005 Eddy Road in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. 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 at 643 E. 101<sup>st</sup> Street, Upper, 1761 Cliffview, and 1005 Eddy Road 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**

28. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), in determining an appropriate penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations at issue, as well as Respondent's ability to pay, ability to continue to do business, any history of such prior violations, and degree of culpability. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007. Based on Respondent's documented inability to pay, Complainant determined that an appropriate civil penalty to settle this action is \$0.

**General Provisions**

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

30. 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.

31. 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.

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

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

34. 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.

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

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

**Elijah King, Respondent**

9-8-11  
\_\_\_\_\_  
Date

*Elijah King*  
\_\_\_\_\_  
Elijah King

**United States Environmental Protection Agency, Complainant**

10/27/11  
Date

Michael D. Harris for M.G.  
Margaret M. Guerriero  
Director  
Land and Chemicals Division



**In the Matter of:**  
**Elijah King**  
**Docket No. TSCA-05-2012-0002**

**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.

10-28-11

Date



Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

RECEIVED

NOV - 1 2011

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Consent Agreement and Final Order of the civil administrative action involving Elijah King, was filed on November 1, 2011, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 767 5669, along with a copy each of the to:

Elijah King  
12823 Speedway Overlook  
East Cleveland, Ohio 44112

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Matt Moore, 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-05-2012-0002

**RECEIVED**

NOV - 1 2011

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