



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

MAR 28 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5782

Mr. Fred Langtry  
General Counsel  
AP Management, Inc.  
500 Skokie Boulevard, Suite 600  
Northbrook, Illinois 60062

Consent Agreement and Final Order, Docket No. TSCA-05-2007-0005

Dear Mr. Langtry:

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 March 28, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,350 and a SEP of \$12,125 is to be paid in the manner prescribed in paragraphs 39, 40, 41 and 42 and 42. Please be certain that the number **BD 2750747X005** and the docket number are written on both the transmittal letter and on the check. Payment is due by April 27, 2007 (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 "Pamela Grace".

Pamela Grace  
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Mary McAuliffe, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
2007-05-23 PM 11:22

IN THE MATTER OF: )  
)  
AP MANAGEMENT, INC., )  
NORTHBROOK, ILLINOIS, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. **TSCA-05-2007-0005**

**JOINT CIVIL COMPLAINT AND  
CONSENT AGREEMENT AND FINAL ORDER**

Complainant, United States Environmental Protection Agency, ("U.S. EPA" or the "Agency"), Region 5, and Respondent AP Management, Inc., formerly known as Banner Property Management, Inc. ("Respondent"), wishing to settle all matters pertaining to this case and having consented to the entry of this Joint Civil Complaint and Consent Agreement and Final Order ("CAFO"); NOW THEREFORE, before the taking of any testimony, without the adjudication of any issues of law or fact herein, the Parties consent to the entry of and agree to comply with the terms of the CAFO.

**I. AUTHORITY AND JURISDICTION**

1. This is a civil administrative action issued under the authority vested in the Administrator of the U.S. EPA by Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.
3. The Respondent is AP Management, Inc., formerly known as Banner Property Management, Inc., located in Northbrook, Illinois.
4. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b) and

22.18(b), provide that where the Parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO.

## **II. STATUTORY AND REGULATORY REQUIREMENTS**

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

6. Under 42 U.S.C. § 4852d, on March 6, 1996, U.S. 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”).

7. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

8. 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.

9. 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.

10. 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.

11. 40 C.F.R. § 745.113(b)(1) of the Disclosure Rule requires the lessor to include, as an attachment to or within the contract, a lead warning statement before a lessee is obligated under the contract to lease target housing.

12. 40 C.F.R. § 745.113(b)(2) requires the lessor to include, as an attachment to or within the contract, a statement by the lessor disclosing the presence of known lead-based paint

and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

13. 40 C.F.R. § 745.113(b)(3) requires the lessor to include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that has been provided to the lessee. If no such records or reports are available, the lessor must so indicate.

14. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, as an attachment to 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 (b)(3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the contract to lease target housing.

15. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, as an attachment to or within the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before a lessee is obligated under the contract to lease target housing.

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

### **III. ALLEGED FACTS**

17. Between at least June 25, 2002 and November 17, 2003, Respondent owned and/or managed Granville Apartments (Rental Building) located at 6230 North Kenmore Avenue, Chicago, Illinois.

18. The Rental Building was constructed prior to 1978.

19. The Rental Building and each rental unit, excluding any 0-bedroom unit, is target housing” as defined in 40 C.F.R. § 745.103.

20. On February 26, 2004, representatives of U.S. EPA conducted an inspection at Respondent's Chicago, Illinois leasing office regarding the Rental Property owned and/or managed by Respondent to determine Respondent's compliance with Section 1018 and its implementation of regulations found at 40 C.F.R. Part 745, Subpart F.

21. On the following dates, Respondent entered into the following lease agreements (Contracts) with individuals for the lease of Rental Property:

Address	Date of Lease
6230 North Kenmore, Apt. No. 1502 , Chicago, Illinois	04/01/03
6230 North Kenmore, Apt. No. 1708, Chicago, Illinois	02/10/03
6230 North Kenmore Apt. No. 1703, Chicago, Illinois	03/04/03
6230 North Kenmore, Apt. No. 807, Chicago, Illinois	06/25/02
6230 North Kenmore, Apt. No. 1107, Chicago, Illinois	11/17/03
6230 North Kenmore, Apt. No. 304, Chicago, Illinois	06/02/03
6230 North Kenmore, Apt. No. 204, Chicago, Illinois	10/01/03

22. Each of the seven Contracts, referenced in the table in paragraph 21, above, covered a term of occupancy greater than 100-days.

23. Between June 25, 2002, and November 17, 2003, Respondent as the owner and/or manager of the Rental Property, entered into agreements with individuals to lease those units, on the dates listed in the table in paragraph 21, above.

24. Respondent is a "lessor," as defined by 40 C.F.R. § 745.103, since it offered the target housing, referenced in the table in paragraph 21, above, for lease.

25. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the Rental Property, became a "lessee," as defined in 40 C.F.R. § 745.103, since he or she entered into a agreement to lease target housing.

#### IV. ALLEGED VIOLATIONS

26. For the residential property and contracts referenced in paragraph 21, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a lead warning statement before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(1).

27. For the residential property and contracts referenced in paragraph 21, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, 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 and/or lead-based paint hazards, before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(2).

28. For the residential property and contracts referenced in paragraph 21, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a list of any records or reports available to the lessor that pertain to lead-based paint and/or lead-based paint hazard information or indicate that no such list exists, before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(3).

29. For the residential property and contracts referenced in paragraph 21, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, a statement by the lessees affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(4).

30. For the residential property and contracts referenced in paragraph 21, U.S. EPA alleges that Respondent failed to include as an attachment, or within each contract, the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures before the lessees were obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(6).

#### **V. PENALTY CALCULATION**

31. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. Part 745 Subpart F, authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997, 31 U.S.C. § 3701 and 62 Fed. Reg. 35038 (1997).

32. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violators, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

33. In consideration of the cooperation displayed by the Respondent and other factors as justice may require, U.S. EPA agrees to mitigate the proposed penalty to \$13,475.

34. In consideration of Respondent's agreement to perform the Supplemental Environmental Project specified in paragraphs 46 through 52, below, U.S. EPA agrees to further mitigate the penalty of \$13,475 to \$1,350.

#### **VI. OPPORTUNITY TO REQUEST A HEARING**

35. Upon executing this CAFO, Respondent waives all rights to request a judicial or administrative hearing under the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and the Consolidated Rules on any issue of law or fact set forth in this CAFO, including, but not limited to, their right to request a hearing, and their right to appellate review

of the final order. This waiver includes any right to contest the appropriateness of the amount of the proposed and final penalty.

## **VII. TERMS OF SETTLEMENT**

36. Respondent admits the jurisdictional allegations contained in this Consent Agreement and Final Order and neither admits nor denies the factual allegations contained in this CAFO.

37. Respondent certifies that upon the effective date of this CAFO, it is no longer managing target housing.

38. The parties consent to the terms of this CAFO.

39. In consideration of the facts and circumstances of this matter, Respondent's cooperation, agreement to complete a Supplemental Environmental Project, and other factors as justice may require, U.S. EPA agrees to mitigate the proposed penalty of \$13,475 to \$1,350. The parties acknowledge and understand that payment of a civil penalty component of \$1,350 together with the completion of the Supplemental Environmental Project costing \$12,125 are made in full satisfaction, extinguishment, and bar of all claims made in the complaint.

40. Respondent must pay the \$1,350 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

41. Respondent must send the check to:

U.S. EPA, Region 5  
P. O. Box 371531  
Pittsburgh, PA 15251-7531

42. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document (BD) number, which is provided in the cover letter for this CAFO, must accompany the payment. Respondent must write the case docket number and the BD number on the face of the check. Respondent must send copies of the check and transmittal letter to:



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

Pamela Grace, (DT-8J)  
Pesticides and Toxics Enforcement Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Mary T. McAuliffe, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3509

43. Neither the civil penalty nor the cost of the supplemental environmental project described below are deductible for federal tax purposes.

44. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

45. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 U.S.C. § 3717. Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

#### **Supplemental Environmental Project**

46. Respondent agrees to take the steps required in this CAFO to complete a Supplemental Environmental Project to abate and/or mitigate lead-based paint hazards in residential housing where one or more children reside in Chicago. This project will be actually completed by Neighborhood Housing Services of Chicago ("NHS"), a not for profit organization.

47. Respondent has entered into a written agreement with NHS under which Respondent agrees that no later than 30 days after signing the written agreement, Respondent will provide a check for \$12,125 to NHS to fund the lead-based paint hazard abatement and/or

mitigation project in accordance with Paragraph 46, and NHS agrees to provide a copy of a report documenting that the funds have been expended within three months after receipt of such funds.

48. No later than 30 days after July 30, 2007, Respondent shall provide (or cause to be provided) U.S. EPA with either: (1) a copy of the report that NHS provides to Respondent documenting the following: (a) that NHS has expended the \$12,125 for lead-based paint hazard abatement and/or mitigation as described in paragraphs 46 and 47, above; (b) the address(es) where such abatement and/or mitigation has been completed; (c) a summary of the work performed at (each) address; and (d) documentation that clearance was conducted after such lead-based paint hazard abatement and/or mitigation activities were performed to determine that the hazard abatement activities are complete and that no settled dust-lead hazards exist; or in the alternative, (2) a verified statement that NHS has not completed and provided to the Respondent a copy of the report described in paragraphs 47 and 48, above.

49. Respondent certifies that it is not required to perform the Supplemental Environmental Project by any law, regulation, grant, order, or any other agreement, or as injunctive relief as of the date Respondent sign this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the Supplemental Environmental Project in any other enforcement action.

50. Respondent's completion of the Supplemental Environmental Project shall consist of providing U.S. EPA with a copy of the cancelled check and a copy of the signed written agreement between Respondent and NHS, as described in paragraph 47, above, within 60 days after the effective date of this CAFO and shall consist of Respondent providing U.S. EPA, within 30 days after July 30, 2007, with either (1) a copy of the report described in

paragraphs 47 and 48, above, that the NHS provides to Respondent, or (2) a verified statement that the NHS has not completed and provided to the Respondent a copy of the report described in paragraphs 47 and 48, above.

51. Respondent must submit copies of all documents or reports required by the CAFO by first class mail to Pamela Grace, at the address in paragraph 42, above.

52. If Respondent violates requirements of this CAFO relating to the Supplemental Environmental Project, Respondent must pay stipulated penalties to the United States in addition to the \$1,350 penalty described in paragraphs 34, 40 - 44, as follows:

a. If Respondent fails to submit documentation of the \$12,125 payment to NHS within 45 days of the effective date of this CAFO, Respondent must pay a stipulated penalty of \$50 for each day after payment was due.

b. If Respondent fails to submit (or cause to be submitted) timely (1) a copy of the report described in paragraphs 47 and 48, above, that the NHS provides to Respondent, or (2) a verified statement that NHS has not completed and provided to the Respondent a copy of the report described in paragraphs 47 and 48, above, within 30 days after July 30, 2007, Respondent must pay a stipulated penalty of \$50 for each day after the report or the verified statement was due until either is submitted, not to exceed \$12,000.

53. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent will use the method of payment specified in paragraphs 40 through 42, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

#### **General Provisions**

54. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged.

55. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations in connection with alleged violations other than those covered by this CAFO.

56. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Hazard Reduction Act and other applicable Federal, state and local laws and regulations.

57. The terms of the CAFO bind the Respondent and its assigns.

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

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

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

61. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5.

Consent Agreement and Final Order  
In the Matter of AP Management, Inc.:

Docket No. TSCA-05-2007-0005


RESPONDENT:

For AP Management, Inc.,

By its \_\_\_\_\_:

AP Management, Inc.

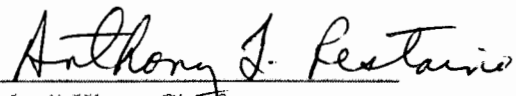
Date: 3/13/07

By:   
Milton Pinsky, its President

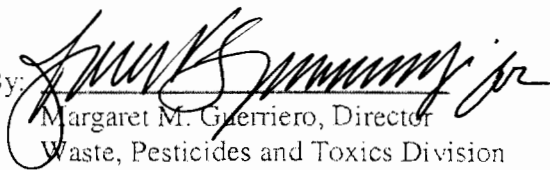
COMPLAINANT:

United States Environmental Protection Agency, Region 5:

Date: 3/20/07

By:   
for Mardi Klevs, Chief  
Pesticides and Toxics Branch

Date: 3/20/07

By:   
Margaret M. Guerriero, Director  
Waste, Pesticides and Toxics Division

2007 MAR 23 AM 11:22  
REGION 5  
CLERK

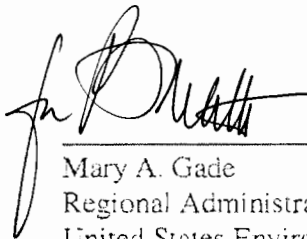
Consent Agreement and Final Order  
In the Matter of AP Management, Inc.

Docket No. TSCA-05-2007-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 3-26-07



---

Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

2007 APR 23 PM 11:22  
REGIONAL HEARING CLERK  
AP Management, Inc.

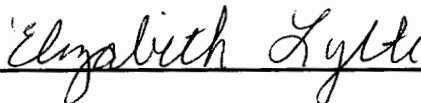
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving AP Management, Inc., was filed on March 28, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5782, a copy of the original to the Respondents:

Mr. Fred Langtry  
General Counsel  
AP Management, Inc.  
500 Skokie Boulevard, Suite 600  
Northbrook, Illinois 60062

and forwarded copies (intra-Agency) to:

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

  
\_\_\_\_\_

Elizabeth Lytle  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2007-0005**

RECEIVED  
MAY 1 11:22 AM '07