

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

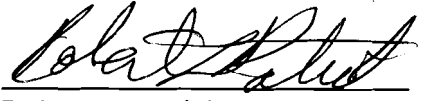
IN THE MATTER OF)
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Homkor of Missouri, Inc.)
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)
Respondent)
_____)

Docket No. TSCA-07-2006-0178

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 8 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: January 16, 2007



Robert L. Patrick
Regional Judicial Officer

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

07 JAN 16 PM 4:06

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

HOMKOR OF MISSOURI, INC.

Respondent

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Docket No. TSCA-07-2006-0178

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about May 9, 2006, pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), when the United States Environmental Protection Agency (EPA), Region 7 (EPA or Complainant) issued a Complaint and Notice of Opportunity for Hearing to Homkor of Missouri (Respondent).

The Complaint charged Respondent with violations of Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations of 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), which were promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

The Complaint proposed a civil penalty of \$44,000.00 for these violations. Complainant and Respondent entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and fully and finally resolves the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint, and neither admits nor denies the factual allegations of the Complaint.
2. Respondent waives its right to contest the allegations of the Complaint and its right to appeal the Final Order accompanying this Consent Agreement.
3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.
5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$3,657.00 to be paid within thirty (30) days of the effective date of the Final Order.
6. The effect of settlement described in Paragraph 5 above is conditional upon the accuracy of Respondent's representations to EPA as memorialized in Paragraph 4 above of this Consent Agreement. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.
7. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits:

Respondent will perform interim controls consisting primarily of scraping loose and peeling paint using wet methods to minimize dust and debris, but which may also include combinations of paint film stabilization, friction and impact surface treatment, dust removal and control, component removal/replacement or enclosure. This SEP will be performed in accordance with Respondent's SEP Work Plan (attached to this document and incorporated by reference) and in accordance with the standards and procedures laid out in the HUD Technical Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, published online at <http://www.hud.gov/offices/lead/guidelines/hudguidelines/>.

8. Within thirty (30) days of the effective date of the Final Order, and prior to initiating the work on the SEP, Respondent will contact the State of Missouri Department of Health and Senior Services, confirming with this State Agency that the individuals and firms performing the work on the project are currently certified in Missouri, as required to perform such work, and informing the State of its intent to perform the work described in Paragraph 7 above and in the SEP Work Plan attached and incorporated by reference, and requesting any procedural information pertaining to performance of said work. Respondent will provide EPA with a copy of all correspondence sent to the State Agency relevant to the SEP project referenced herein.

9. The total expenditure for the SEP shall be not less than \$15,676.00 and all work on the SEP shall be completed no later than December 31, 2007. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

10. Seventy-Five (75) days from the effective date of this Agreement, Respondent will provide to the EPA Region 7 contact referenced in Paragraph 11 below a Status Report. The SEP Status Report will contain a description of the work accomplished to date on the project referenced in Paragraph 7 above, along with copies of any contracts entered into for the performance of the project, and documentation that all workers are trained in accordance with OSHA requirements

under 29 CFR 1926.21(b)(2), or, if work activities exceed the requirements of interim control procedures, that all workers are properly certified under State and Federal requirements to perform lead-based paint abatement work.

11. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Documentation that all workers on the project were trained in accordance with OSHA requirements under 29 CFR 1926.21(b)(2), or, if work activities exceeded the requirements of interim control procedures, that all workers were properly certified under State and Federal requirements to perform lead-based paint abatement work prior to engaging in said work.
- (iii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iv) The final clearance examination report, as described in the attached Work Plan;
- (v) The Operations and Maintenance Plan prepared by a certified lead-hazard Risk Assessor in accordance with the terms of the attached Work Plan; and
- (vi) The following certification signed by an appropriate official representing Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

(vii) The report shall be directed to the following:

As to EPA:
Kori Kuehl
WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

As to the state:
Lisa Schutzenhofer
Program Manager
Missouri Department of Health & Senior Services Lead Licensing Program
930 Wildwood, P.O. Box 570
Jefferson City, MO 65102

12. In the event that Respondent fails to complete the SEP in accordance with this Order or to the extent that actual expenditures for the SEP do not equal or exceed the amount of money required to be expended on the SEP as set forth above, Respondent shall be liable for stipulated penalties as follows:

(i) If the SEP is not timely completed to the satisfaction of EPA in accordance with the terms of this Order, and Respondent has failed to demonstrate both that it made good faith and timely efforts to complete the project and that at least 90% of the amount of money required to be expended on the SEP (as stated in Paragraph 9 above), Respondent shall pay a stipulated penalty in the amount of \$10,973.00.

(ii) If the SEP is completed to the satisfaction of EPA but Respondent's actual expenditures are less than 90 percent of the amount of money required to be expended on the SEP, Respondent shall pay a stipulated penalty in the amount of Respondent's actual expenditures subtracted from \$15,676.00, up to a maximum of \$2,743.00.

(iii) The determination of whether the SEP is satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

(iv) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

13. Respondent certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

14. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

15. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 5 above or any portion of a stipulated penalty as stated in Paragraph 12 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this

Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of \$3,657.00 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

FROM :

FAX NO. : 18168421815

Jan. 16 2007 02:39PM P2

01-16-'07 11:35 FROM-Homkor of MO

8164213706

T-429 P002/002 F-733

Homkor of Missouri, Inc. TSCA-07-2006-0178
CAFO SEP Page 8 of 9


**RESPONDENT
HOMKOR OF MISSOURI, INC.**

Date: 1/16/2007

By: Linda Shippee, VP
for Homkor of Missouri, Inc
LINDA SHIPPEE VP
Print Name Title

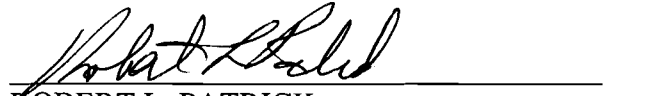
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/16/2007


Chris R. Dudding
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: January 16, 2007


ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Work Plan for Homkor's Supplemental Environmental Project

Homkor of Missouri ("Homkor") proposes to perform the following interim control project in conformance with the Supplemental Environmental Project policies of EPA as a part of the settlement agreement between Homkor and EPA. The interim control project will be completed under the oversight of a certified Lead Inspector or Lead Hazard Risk Assessor licensed by the State of Missouri and performed in conformance with applicable regulations. A clearance examination/risk assessment will be performed upon conclusion of implementation of the interim controls on friction and impact surfaces at Homkor's Century Towers property. An estimate by Kingston Environmental Services, Inc. of the cost of a clearance examination/risk assessment, including dust wipe samples is attached.

Project to be Completed

Century Towers Apartments. This 224-unit apartment complex was built in 1968 and is located at 612 Garfield, Kansas City, Missouri 64124. Lead paint was confirmed at the site by testing completed in April, 2000 by Ecosphere Environmental Services, Inc. Homkor will perform interim controls on the surface areas listed below in all units in common areas that have been identified as having lead-based paint present located within the Century Towers Apartments at a cost of no less than \$15,676.00. This amount includes the labor and materials. In addition to the interim control work, clearance examinations by an independent entity other than the contractor performing the interim control work are required prior to reoccupancy of the work area. This cost for a clearance examination is \$65.00 per unit plus \$15.00 per dust wipe sample. The number and location of dust wipe samples is determined by the interim control work performed and Table 15.1 of the HUD Technical Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ("HUD Guidelines").

Interim control activities shall primarily consist of scraping loose and peeling paint using wet methods, but may also include combinations of paint film stabilization, friction and impact surface treatment, dust removal and control, component removal/replacement or enclosure. All interim control activities will be conducted in accordance with Chapter 11 of the HUD Guidelines and this workplan.

A table of the specific areas and corresponding interim controls is provided below. The items listed below are based on the information provided in the testing report from Ecosphere Environmental Services, Inc., referenced above. This table is intended as a guide and is subject to change based on site conditions at the time interim control procedures are being implemented.

Floor	Location	Component	Quantity	Interim Control Procedure
10	Bathrooms – All	Walls & Ceiling	11,400 SF	Scrape loose and peeling paint and repaint.
9	Bathrooms – All	Walls & Ceiling	11,400 SF	Scrape loose and peeling paint and repaint.
8	Bathrooms – All	Walls & Ceiling	11,400 SF	Scrape loose and peeling paint and repaint.

7	Bathrooms – All	Walls & Ceiling	11,400 SF	Scrape loose and peeling paint and repaint.
6	Bathrooms – All	Walls & Ceiling	11,400 SF	Scrape loose and peeling paint and repaint.
5	Bathrooms – All	Walls & Ceiling	11,400 SF	Scrape loose and peeling paint and repaint.
4	None - Mechanical	N/A	N/A	N/A
3	None – Vacant Shell	N/A	N/A	N/A
2	None - Totally Renovated	N/A	N/A	N/A
1	Former Pathology Room	Walls & Doors	576 SF	Scrape loose and peeling paint and repaint.
Bsmt	Room 044 – Boiler Room	Vertical Tank and Generator	100 SF	Scrape loose and peeling paint and repaint.

Homkor’s consultant, Kingston Environmental Services, will generate a lead hazard control plan based on the specific conditions identified by Ecosphere Environmental Services, Inc. and other relevant data, and will address the individual points set forth in Section I.D of Chapter 11 of the HUD Guidelines and this Work Plan.

Prior to initiating the work, Homkor will confirm with the State of Missouri Department of Health and Senior Services that the individuals & firms performing the work and conducting oversight are currently certified in Missouri, as required by state and federal law. Homkor and their contractors will comply with the requirements specified in Title 40 Code of Federal Regulations Part 745 – Lead-Based Paint Poisoning Prevention in Certain Residential Structures, Subpart E – Residential Property Renovation, including, but not limited to the following: Homkor will provide a letter to all tenants of the building describing the general activities that will be conducted within the structure. This letter shall also provide a point of contact available to answer any questions or concerns about the work activities. A receipt signed by the tenant, and/or proof of delivery or mailing will be obtained as required by §745.85, *Information distribution requirements*. A copy of the EPA pamphlet *Protect Your Family From Lead In Your Home*, EPA 747-K-99-001, June 2003 will be provided along with the letter in order to educate the tenants about the hazards of lead dust.

Pursuant to Chapter 11 of the HUD Guidelines, Section I.J, the lead hazard control plan will specify measures to be taken by Homkor to ensure that residents, and particularly young children, of housing units where work is being performed, will not be exposed to dust and debris generated by the interim control activities. Such measures may consist of use of scrapers or sanders with high-efficiency particulate air (HEPA) attachments to minimize dust dispersal, provision of alternate living/bathing facilities to residents of target housing units until all dust and debris has been removed and the dwelling unit has been thoroughly cleaned, or other measures as deemed appropriate by the risk assessor.

At a minimum, all workers will be trained in accordance with OSHA requirements under 29 CFR 1926.21(b)(2). If work activities exceed the requirements of interim control procedures, certified lead abatement supervisors and workers employed by a properly certified Lead Abatement Contractor will be utilized. In its progress reports to EPA, Homkor will provide documentation that all workers are properly trained and/or certified. In the event that workers employed by a properly certified Lead Abatement Contractor are utilized, clearance examinations will be performed by an independent entity other than the contractor performing the work.

To ensure the success of the interim control activities and prevent future lead hazards, an Operations and Maintenance Plan will be generated and maintained to monitor and evaluate the condition of the lead-based paint that remains in the structure. This Plan will specify the quantity and frequency of re-inspections as well as procedures to be followed in the event deteriorated paint or failed interim controls are observed. Kingston Environmental Services, Inc. has provided a cost estimate of \$2,500.00 for developing and implementing this Plan. This Plan and any other Plans will be provided to EPA as an attachment to its periodic progress reports or to the SEP Completion Report as required in the Consent Agreement and Final Order in this matter.

Legal Guidelines for SEP Projects

The interim control project set forth above falls within the SEP policy guidance and legal guidelines for SEP projects. This interim control project is not inconsistent with any provision of the underlying statutes. This interim control project directly advances the goals of the Residential Lead Based Paint Hazard Reduction Act of 1992 ("the Act") by achieving containment of lead-based paint in target housing, thus reducing potential lead-based paint health hazards therein. This interim control project has a strong nexus with the Act for the reason that the project will reduce the potential for adverse impacts to public health.

The funding for this interim control project is in no way controlled by EPA nor will EPA gain any resources as a result of such project. Homkor will not use any federal funds or grants to perform this interim control project. Furthermore, Homkor agrees that the monies expended on this project will not be tax-deductible expenditures.

Categories of Supplemental Environmental Projects

Lead hazard reduction projects are common settlement tools used in alleged violations of the Lead Based Paint Disclosure Rules. EPA has expressed a preference for SEP projects, which minimize or eliminate exposure risks at a facility.

Lead hazard reduction projects involving lead-based paint fall within the third type of SEP described in the SEP guidance, the "Pollution Reduction" category of Supplemental Environmental Projects, for the reason that such projects result "in a decrease in the amount and/or toxicity of [a] hazardous substance" that has previously been generated or released into the environment. Elimination of exposure to lead-based paint, particularly on friction and

impact surfaces of the target housing units, “employs recycling, treatment, containment or disposal techniques” which reduce the potential for lead-based paint based health related effects and other harmful consequences of lead in the environment.

To the extent that lead-based paint interim control projects do not fit within one of the seven specific categories of SEP projects, these projects would fit within the “catch-all” eighth category described in the SEP policy. This category includes “projects determined by the case team to have environmental merit which do not fit within at least one of the seven categories above, but are otherwise fully consistent with all other provisions of the SEP policy.”

Conclusion

Homkor proposes to perform the above referenced lead hazard reduction projects at Century Towers. This project will be completed on or before December 31, 2007, unless Homkor exercises its option to pay any remaining monies due in the form of a stipulated penalty as set forth in Paragraph 12 of the Consent Agreement and Final Order.

IN THE MATTER OF Homkor of Missouri, Inc., Respondent
Docket No. TSCA-07-2006-0178

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Chris R. Dudding
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Shawna M. Bligh, Esq.
The Session Law Firm
2600 Grand Blvd., Suite 440
Kansas City, Missouri 64108

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

The Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 1/17/07



Kathy Robinson
Hearing Clerk, Region 7