

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of )  
)  
Maxus Properties, Inc. ) Docket No. TSCA-07-2008-0015  
North Kansas City, Missouri )  
)  
Respondent )  
)

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Maxus Properties, Inc. (Respondent), have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of 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), 22.18(b)(2), and 22.18(b)(3).

**ALLEGATIONS**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements 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*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Maxus Properties, Inc., 104 Armour Road, North Kansas City, Missouri 64116.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase-out of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence

of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Violations

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

General Allegations

7. Respondent is, and was at all times referred to herein, a "person" within the meaning of TSCA.

8. Respondent is the "agent" as defined by 40 C.F.R. § 745.103, for the purpose of leasing apartments at the following locations:

<u>Name of Apartment Complex</u>	<u>Address</u>
Cedarwood Hills	2040 Glass Road NE, Cedar Rapids, Iowa
Regency North Apartments	6024 N. Jefferson Street, Kansas City, Missouri
Woodhollow Apartments	1871 McKelvey Hill Drive, St. Louis, Missouri
Hidden Valley	9355 Bales, Kansas City, Missouri
Kings Court Apartments	2300 A-E Cedar Road, Olathe, Kansas
Lamar Place	6200 W. 51 <sup>st</sup> Street, Mission, Kansas
Knollwood Apartments	4700 N. Highland Ave., Kansas City, Missouri
Forest Park	4623 NE Winn, Kansas City, Missouri

9. The properties referenced in Paragraph 8 above were constructed before 1978; therefore, they are "target housing" as defined by 40 C.F.R. § 745.103.

10. The EPA has conducted an evaluation of Respondent's compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and has collected records and information from Respondent as part of that evaluation.

11. Information collected during the evaluation showed that Respondent entered into a contract to lease apartments at the properties identified in Paragraph 8.

Count 1

12. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 11, as if fully set forth herein.

13. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #209, 2010 Glass Road NE, Cedar Rapids, Iowa, at the Cedarwood Hills Apartment Complex on or about April 21, 2003.

14. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1).

15. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

16. The facts stated in Paragraphs 1 through 15, above, are herein incorporated.

17. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #103, 4629 N.E. Winn Road, Kansas City, Missouri, at the Forest Park Apartment Complex on or about May 6, 2006.

18. Information collected showed that Underground Environmental Services, Inc., conducted a Lead Paint Survey of Forest Park Apartments, 4623 N.E. Winn Road, Kansas

City, Missouri, the results of which were issued in a report dated November 26, 2001. The Lead Paint Survey pertained to lead-based paint and/or lead-based paint hazards at the Forest Park Apartment Complex.

19. Information collected showed that at the time of the contract for lease, Respondent failed to acquire a statement affirming lessee's receipt of the lead hazard information pamphlet and the Lead Survey Report detailed in Paragraph 18 as required by 40 C.F.R. § 745.113(b)(4). Respondent also failed to include an acknowledgement by the agent that it had informed lessor of lessor's legal obligations as required by 40 C.F.R. § 745.113(b)(5).

20. Respondent's failure to perform the required acts detailed in Paragraph 19 are violations of 40 C.F.R. §§ 745.113(b)(4) through (b)(5) and 40 C.F.R. § 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

### Count 3

21. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 20, as if fully set forth herein.

22. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #B, 9338 Bales Drive, Kansas City, Missouri, at the Hidden Valley I Apartment Complex on or about September 13, 2006.

23. Information collected showed that Underground Environmental Services, Inc., conducted a Lead Paint Survey of Hidden Valley I, 9355 Bales Drive, Kansas City, Missouri, the results of which were issued in a report dated November 26, 2001. The Lead Paint Survey pertained to lead-based paint and/or lead-based paint hazards at the Hidden Valley I

Apartment Complex.

24. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with the Lead Survey Report referenced in Paragraph 23 as required by 40 C.F.R. § 745.107(a)(4).

25. Respondent's failure to perform the required acts detailed in Paragraph 24 is a violation of 40 C.F.R. §§ 745.107(a)(4) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

26. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 25, as if fully set forth herein.

27. Information collected during the evaluation showed that Respondent entered into a written contract to lease an apartment at 2305 East Cedar, Olathe, Kansas, at the Kings Court Apartment Complex on or about April 1, 2006.

28. Information collected showed that Underground Environmental Services, Inc., conducted a Lead Paint Survey of Kings Court Apartments, 2305 East Cedar, Olathe, Kansas, the results of which were issued in a report dated March 1, 2002. The Lead Paint Survey pertained to lead-based paint and/or lead-based paint hazards at the Kings Court Apartment Complex.

29. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with the Lead Survey Report referenced in Paragraph 28 as required by 40 C.F.R. § 745.107(a)(4).

30. Respondent's failure to perform the required acts detailed in Paragraph 29 is a violation of 40 C.F.R. §§ 745.107(a)(4) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

31. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 30, as if fully set forth herein.

32. Information collected during the evaluation showed that Respondent entered into a written contract to lease an apartment at 2307 East Cedar, Olathe, Kansas, at the Kings Court Apartment Complex on or about April 15, 2006.

33. Information collected showed that Respondent failed to list as an attachment or within the contract, the Lead Survey Report referenced in Paragraph 28 available to the lessor at the time of leasing, pertaining to lead-based paint and/or lead-based paint hazards as required by 40 C.F.R. 745.113(b)(4).

34. Information collected showed that Respondent failed to include as an attachment or within the contract, a statement affirming lessee's receipt of the Lead Survey Report detailed in Paragraph 28 as required by 40 C.F.R. 745.113(b)(4).

35. Information collected showed that Respondent failed to include as an attachment or within the contract, an acknowledgement by the agent that it had informed lessor of lessor's obligations under 42 U.S.C. § 4852d and that the agent is aware of their duty to ensure compliance with the requirements of 40 C.F.R. Part 745, Subpart F, as required by 40 C.F.R. § 745.113(b)(5).

36. Information collected showed that Respondent failed to include as an attachment or within the contract, lessor and agent signatures certifying to the accuracy of their statements along with the dates of their signatures as required by 40 C.F.R. § 745.113(b)(6).

37. Respondent's failure to perform the required acts detailed in Paragraphs 32 through 36 are violations of 40 C.F.R. §§ 745.113(b)(3) through (b)(5) and 40 C.F.R. § 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

38. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 38, as if fully set forth herein.

39. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #1, 5007 Lamar Avenue, Mission, Kansas, at the Lamar Place Apartment Complex on or about May 24, 2006.

40. Information collected showed that Underground Environmental Services, Inc., conducted a Lead Paint Survey of the Lamar Place Complex, 6200 W. 51st Street, Mission, Kansas, the results of which were issued in a report dated November 26, 2001. The Lead Paint Survey pertained to lead-based paint and/or lead-based paint hazards at the Lamar Place Apartment Complex.

41. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with the Lead Survey Report referenced in Paragraph 40 as required by 40 C.F.R. § 745.107(a)(4).

42. Respondent's failure to perform the required acts detailed in Paragraph 41 is a violation of 40 C.F.R. §§ 745.107(a)(4) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7

43. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 42, as if fully set forth herein.

44. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #5, 6023 N. Jefferson Street, Kansas City, Missouri, at the Regency North Apartment Complex on or about May 18, 2008 .

45. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1).

46. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 8

47. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 46, as if fully set forth herein.

48. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #2, 6125 Jefferson Street, Kansas City, Missouri, at the

Regency North Apartment Complex on or about December 30, 2006.

49. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1).

50. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 9

51. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 50, as if fully set forth herein.

52. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #C, 1877 McKelvey Drive, Maryland Heights, Missouri, at the Woodhollow Apartment Complex on or about January 15, 2006.

53. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1).

54. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 10

55. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 54, as if fully set forth herein.

56. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #306, 1847 Woodhollow Drive, Maryland Heights, Missouri, at the Woodhollow Apartment Complex on or about August 4, 2006.

57. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1).

58. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 11

59. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 58, as if fully set forth herein.

60. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #306, 1855 McKelvey Drive, Maryland Heights, Missouri, at the Woodhollow Apartment Complex or about December 8, 2006.

61. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1).

62. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 12

63. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 58, as if fully set forth herein.

64. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #311, 1891 McKelvey Drive, Maryland Heights, Missouri, at the Woodhollow Apartment Complex or about October 14, 2006.

65. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet as required by 40 C.F.R. § 745.107(a)(1).

66. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 13

67. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 66, as if fully set forth herein.

68. Information collected during the evaluation showed that Respondent entered into a written contract to lease apartment #12, 1519 N.E. Vivion Road, Kansas City, Missouri, at

the Knollwood Apartment Complex on or about May 6, 2006.

69. Information collected showed that Underground Environmental Services, Inc., conducted a Lead Paint Survey of the Knollwood Apartment Complex, 4700 North Highland Avenue, Kansas City, Missouri, the results of which were issued in a report dated November 26, 2001. The Lead Paint Survey pertained to lead-based paint and/or lead-based paint hazards at the Knollwood Apartment Complex.

70. Information collected showed that at the time of the contract for lease, Respondent failed to provide the lessee with the Lead Survey Report referenced in Paragraph 69 as required by 40 C.F.R. § 745.107(a)(4).

71. Respondent's failure to perform the required acts detailed in Paragraph 70 is a violation of 40 C.F.R. §§ 745.107(a)(4) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and of Section 409 of TSCA, 15 U.S.C. § 2689.

### **CONSENT AGREEMENT**

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all TSCA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with 40 C.F.R. Part 745, Subpart F.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in Paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of TSCA alleged in this document.

11. The effect of the settlement described in Paragraph 10, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5, above.

**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 Four Thousand, Nine Hundred and Twelve Dollars (\$4,912) 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:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Demetra O. Salisbury  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

5. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

**RESPONDENT**  
**MAXUS PROPERTIES, INC.**

Date: 8/11/2008

By: 

Michael P McRobert  
Print Name and Title

President

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

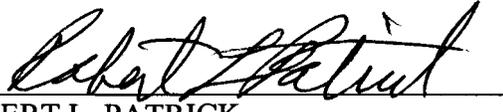
Date: 8/18/08

By: Jamie Green  
Jamie Green, Branch Chief  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division

Date: Aug. 19, 2008

By: Demetra O. Salisbury  
Demetra O. Salisbury, Assistant Regional Counsel  
Office of Regional Counsel

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

Date: Aug. 27, 2008   
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Maxus Properties, Inc., Respondent  
Docket No. TSCA-07-2008-0015

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:

Demetra O. Salisbury  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Robert B. Thompson  
Attorney at Law  
4324 Belleview, #201  
Kansas City, Missouri 64111

Dated: 8/27/08

  
Kathy Robinson  
Hearing Clerk, Region 7