

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 )  
)  
BCJN INVESTMENTS, INC., )  
)  
Respondent )

Docket No. TSCA-07-2006-0247

**CONSENT AGREEMENT AND FINAL ORDER**

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

**FACTUAL 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. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. §22.18 and decided to resolve this matter and settle the allegations described herein without a formal hearing and without any admission or denial of liability on the part of Respondent other than specifically set forth herein. The Parties desire to avoid the additional costs, time, inconvenience and uncertainty associated with litigation and wish to settle their disputes as herein set forth.

### **Parties**

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Radiation, Asbestos Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent, BCJN Investments, Inc., a closely held Missouri company, and BCJN Properties, a Missouri partnership, are owned by members of the Hurst family owning residential rental property in Buchanan County and Andrew County, Missouri (“Respondent” shall collectively refer to both Hurst entities mentioned above.)

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 phaseout 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.

### Alleged Violations

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

#### Count 1

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

8. Respondent is the lessor, as that term is defined by 40 C.F.R. § 745.103, of properties located in Buchanan County and Andrew County, Missouri, including, but not limited to such properties located at 2703 Melrose, Apartment G; 1115 Tamara; and 2704 Montaigne, Apartment F, all in St. Joseph, Missouri (hereinafter collectively referred to as "Respondent's Properties").

9. The property referenced above was constructed before 1978; therefore, it is "target housing" as that term is defined by 40 C.F.R. § 745.103.

10. Information collected shows that Respondent entered into a contract to lease 2703 Melrose, Apartment G, St. Joseph, Missouri, on or about February 5, 2004.

11. Information collected shows that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

12. 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, in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C.

§ 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

13. The facts stated in paragraphs 7 through 9 are alleged and incorporated as if fully stated herein.

14. Information collected shows that Respondent entered into a contract to lease 1115 Tamara, St. Joseph, Missouri, on or about September 1, 2001.

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 Section 109 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section of TSCA, 15 U.S.C. § 2615.

Count 3

16. The facts stated in paragraphs 7 through 9 are incorporated as if fully stated herein.

17. Information collected shows that Respondent entered into a contract to lease 2704 Montaigne, Apartment F, St. Joseph, Missouri, on or about May 6, 2004.

18. Information collected shows that Respondent failed to provide lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

19. 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. § 485d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**CONSENT AGREEMENT**

20. For the sole and limited purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

21. For the sole and limited purposes of this proceeding, Respondent admits the factual allegations set forth above.

22. For the sole and limited purposes of this proceeding, 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.

23. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

24. 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.

25. For the sole and limited purposes of this proceeding, Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of Thirty-Three Thousand Dollars (\$33,000.00) to be paid within thirty (30) days of the effective date of the Final Order.

26. Respondent understands that its failure to timely pay the civil penalty stated in Paragraph 25 above, may result in the commencement of a civil action in Federal District Court to collect said penalty, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil 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 charged 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.

27. Compliance with this Consent Agreement and Final Order shall resolve the allegations of violations resulting from the Respondent's response to EPA's Information Request

Letter dated August 2, 2004, concerning Respondent's properties identified in the Information Request Letter. Full payment of the penalty proposed herein shall resolve any and all liability concerning any violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, related to Respondent's properties identified in the Information Request Letter.

28. Respondent and EPA agree to settle this matter by their execution of this Consent Agreement and Final Order. The Parties agree that the settlement of this matter is in the public interest and that this Consent Agreement and Final Order is consistent with the applicable law.

### **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 civil penalty of Thirty-Three Thousand Dollars (\$33,000.00) within thirty (30) days of the effective date of this Final Order. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer. 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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Rupert G. Thomas, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.


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

4. Full payment by Respondent of the civil penalty as set forth above shall resolve any and all liability related to the violations of Residential Lead Based Paint Hazard Reduction Act of 1992 and TSCA concerning the residential rental property owned by Respondent in Buchanan County and Andrew County, Missouri identified in the Respondent's response to EPA's Information Request Letter dated August 2, 2004.

**RESPONDENT**  
**BCJN INVESTMENTS, INC.**

Date: 11/13/06

By:

  
\_\_\_\_\_  
Jennifer Hens  
Print Name Title *pres.*

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

Date: 11/16/06

By: Naima Halim Chestnut  
Naima Halim-Chestnut, Acting Chief  
Radiation, Asbestos, Lead and Indoor Programs Branch


Date: 11/18/06

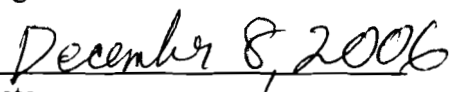
By: Rupert G. Thomas  
Rupert G. Thomas, Attorney  
Office of Regional Counsel



IN THE MATTER of BCJN INVESTMENTS, INC.  
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IT IS SO ORDERED. This Order shall become effective immediately.

  
\_\_\_\_\_  
Robert L. Patrick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII

  
\_\_\_\_\_  
Date

IN THE MATTER OF BCJN Investments, Inc., Respondent  
Docket No. TSCA-07-2006-0247

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:

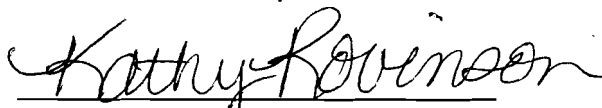
Copy hand delivered to  
Attorney for Complainant:

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

Copy by Certified Mail Return Receipt to:

Lee C. Tieman  
Liles, Davison & Tieman, LLC  
Attorneys at Law  
1018 West Street Maartens Drive  
Suite 200  
St. Joseph, Missouri 64506

Dated: 12/8/06

  
Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7