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**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

In the Matter of

Docket No. TSCA-07-2012-0027

Mark and Angie Janos
Rolla, Missouri

Respondent

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CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Mark and Angie Janos (Respondents) 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 Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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 (CAFO) serves as notice that EPA has reason to believe that Respondents have 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.

Section II

Parties

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

4. The Respondents are Mark and Angie Janos.

Section III

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 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.

Section IV

General Factual Allegations

6. Respondents are, and at all times referred to herein were, “persons” within the meaning of TSCA.

7. Respondents are the “lessor(s)” as defined by 40 C.F.R. § 745.103, for the lease of 600 R Arkansas Street, Rolla, Missouri (the Property).

8. The Property was constructed before 1978.

9. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

Violations

10. The Complainant hereby states and alleges that Respondents have violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

11. The facts stated in Paragraphs 6 through 9 above are herein incorporated.

12. Respondents entered into a contract to lease the target housing unit located at 600 R Arkansas Street, Rolla, Missouri, on or about January 17, 2012.

13. Respondents failed to provide the lessee of 600 R Arkansas Street with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before the lessee was obligated under contract to lease the target housing unit.

14. Respondents' failure to perform the act indicated in Paragraph 13 above is a violation of 40 C.F.R. § 745.107 and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

15. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

16. Respondents neither admit nor deny the factual allegations set forth above.

17. Respondents waive their right to contest any issue of fact or law set forth above and their right to appeal the Final Order accompanying this Consent Agreement.

18. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

19. Respondents certify by the signing of this Consent Agreement and Final Order that they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

20. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty as specified in the Final Order.

21. The effect of settlement described in Paragraph 22 below is conditioned upon the accuracy of Respondents' representations to EPA, as memorialized in Paragraph 19 of this Consent Agreement and Final Order.

22. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this document.

23. In settlement of this matter, Respondents agree to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits:

Abatement of lead-based paint at target housing by and through a certified lead abatement contractor at the cost of not less than Eleven Thousand Dollars (\$11,000) for the replacement of twenty-nine (29) single hung windows in accordance with the federal lead-based paint abatement regulations and the bid that is attached to this document and incorporated by reference. The abatement work shall be performed at the following target housing units located in Rolla, Missouri: 406 Fort Wyman Road, 600 Arkansas Street, and 600 R. Arkansas Street. In accordance with Missouri state regulations, following the completion of the abatement work, Respondents must have lead clearance testing performed by a certified risk assessor. The abatement work and the lead clearance testing may not be performed by the same individual or entity.

24. Within thirty (30) days of the effective date of the Final Order, Respondents will provide EPA with a copy of the letter sent to the Missouri Department of Health and Senior Services informing the state of Respondents' intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

25. The total expenditure for the SEP shall be not less than Eleven Thousand Dollars (\$11,000) and the SEP shall be completed no later than 120 days from effective date of the final order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

26. Respondents agree that the abatement work on the SEP referenced in Paragraph 23 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities. Respondents are responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 23 above receive a copy of this CAFO and all attachments pertaining to the SEP. Respondents are responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

27. Within thirty (30) days of completion of the SEP, Respondents 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:

- a. A detailed description of the SEP as implemented;
- b. Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- c. The final abatement report, as required by state law; and
- d. The following certification signed by Respondents or, if Respondents are a corporation, an officer of the corporation:

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.

The report shall be directed to the following:

Candace Bias
WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

As to the state:

Chris Silva
Missouri Department of Health and Senior Services
P.O. Box 570
Jefferson City, Missouri 65102-0570.

28. Respondents agree to the payment of stipulated penalties as follows:
 - a. In the event Respondents fail to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

i. If the SEP is not completed satisfactorily and timely pursuant to the requirements set forth in this CAFO, Respondents shall be liable for and shall pay a stipulated penalty to the United States in the amount of Eleven Thousand Dollars (\$11,000).

ii. If the SEP is satisfactorily completed, but the Respondents spend less than Eleven Thousand Dollars (\$11,000) on the SEP, Respondents shall pay as a stipulated penalty to the United States the amount of Eleven Thousand Dollars (\$11,000) minus the amount that Respondents can demonstrate it spent upon the satisfactorily completed SEP.

b. If Respondents fail to timely and completely submit the SEP Completion Report required by this CAFO, Respondents shall be liable for and shall pay a stipulated penalty in the amount of One Hundred Dollars (\$100.00) for each day after the due date until a complete report is submitted.

c. EPA shall determine whether the SEP has been satisfactorily completed and whether the Respondents have made a good faith, timely effort to implement the SEP.

d. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the SEP or other resolution under this CAFO.

e. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 1 the Final Order portion of this Consent Agreement and Final Order.

29. Respondents certify that they are not required to perform or develop the SEP by any federal, state or local law or regulation; nor are Respondents 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. Respondents further certify that Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

30. Respondents further certify that, to the best of their knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

31. For federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

32. Any public statement, oral or written, in print, film or other media, made by Respondents 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.”

33. Respondents understand that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 28 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.

Section VI

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. Respondents shall pay a civil penalty of One Thousand One Hundred Twenty Dollars (\$1,120.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondents by name and docket number (TSCA-07-2012-0027) 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
PO Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency".

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Kelley Catlin, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

RESPONDENTS
Mark and Angie Janos

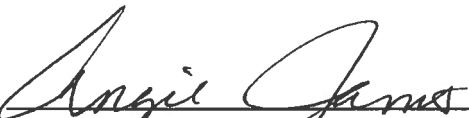
Date: 10/31/12

By: 

Mark Janos
Print Name

Title

Date: 10/31/12

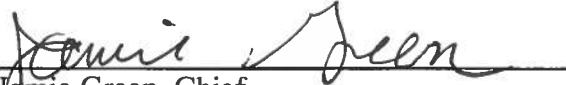
By: 

Angie Janos
Print Name

Title


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/1/12



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

Date: 11/1/12



Kelley Catlin, Attorney
Office of Regional Counsel

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

Date: 11/15/12

Karina Borromeo
KARINA BORROMEO
Regional Judicial Officer

ATTACHMENT 1



Spartan Services, LLC

Environmental Remediation & Facilities Repair

570 Marshall Dr. Suite B
St. Robert, MO 65584
573-336-5767 Office
573-336-7130 fax

Lead Abatement Proposal

DATE: July 25, 2012

TO: Mark Jantz
12940 Oakmeadow Dr
Rolla, MO 65451

573-341-3884
573-341-9088 fax
mjohn@spartanllc.com
jbruce@spartanllc.com

PROJECT: Replace Lead Paint Windows 3 houses
Rolla, MO

SCOPE OF WORK: Remove existing lead based paint windows, replace with new vinyl insert single hung windows, replace trim as necessary, wrap exterior trim w/ metal for maintenance free finish.

406 Fort Wyman Road	\$	3,500.00
600 Rear Arkansas	\$	3,500.00
600 Arkansas	\$	4,000.00
Total	\$	11,000.00

Includes mobilization to MO DNR and EPA as necessary
Removal of Lead based Paint materials at approved landfill
Estimated project duration - 10 days

INCLUDES:

- * Compliance w/ applicable MO DNR, MO Dept of Health, OSHA, EPA & MO DOT regulations
- * Disposal of LBP materials at MO DNR approved landfill facility
- * MO DNR licensed & certified workers - covered by Workers Comp
- * 1 Mil General Liability Asbestos & Lead Abatement Insurance

SPECIAL CONDITIONS:

- * Owner will be given copies of all notifications, landfill receipts, air monitoring reports (if any), employees licenses / certifications, and daily reports.
- * Mobilization and work over standard work week - no weekend work stipulated

PAYMENT TERMS:

- * 50% upon mobilization, balance upon completion and acceptance of project by client

Thank You,

David S. Acorn

David Acorn, Gen. Mgr

573-433-1255 cell

Above proposal & payment terms agreed to and accepted by:

(signature & date)

(name & title)

IN THE MATTER OF Mark and Angie Janos, Respondent
Docket No. TSCA-07-2012-0027

CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

Kelley Catlin
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Certified Mail to:

Mark and Angie Janos
12040 Oak Manor Drive
Rolla, Missouri 65401

Dated: 11/19/12



Kathy Robinson
Hearing Clerk, Region 7