

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Kessinger Real Estate, LTD.**

Respondent.

Docket No. TSCA-04-2020-3106(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. NATURE OF THE ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 16(a) of the Toxic Substances Control Act (TSCA or the Act), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
5. Respondent is Kessinger Real Estate, LTD., a company doing business in the State of Mississippi. This proceeding pertains to Respondent's target housing located in the State of Mississippi.

### III. GOVERNING LAW

6. The Administrator of the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F under the authority of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, also known as Title X of the Housing and Community Development Act of 1992. Pursuant to Title X, it is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with a provision of Title X or any rule or order issued under Title X.
7. 40 C.F.R. Part 745, Subpart F imposes certain requirements on the sale of target housing. Generally, among other obligations under this Subpart a seller of target housing shall disclose to the purchaser the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser with a lead hazard information pamphlet; and attach specific disclosure and warning language to the purchase contract before the purchaser is obligated under a contract to purchase target housing.
8. The term “target housing” is defined at 40 C.F.R. § 745.103, to mean 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. The term “residential dwelling” is defined at 40 C.F.R. § 745.103, to mean a single-family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
10. The term “seller” is defined at 40 C.F.R. § 745.103, to mean any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term “seller” also includes: an entity that transfers shares in a cooperatively owned project, in return for consideration; and an entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.
11. The term “purchaser” is defined at 40 C.F.R. § 745.103, to mean an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
12. The term “agent” is defined at 40 C.F.R. § 745.103, to mean any party who enters into a contract with a seller, including any party who enters into a contract with a representative of the seller, for the purpose of selling target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.
13. The term “owner” is defined at 40 C.F.R. § 745.103, to mean any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

14. Pursuant to 40 C.F.R. § 745.107(a), before the purchaser is obligated under any contract to purchase target housing that is not otherwise an exempt transaction pursuant to 40 C.F.R. § 745.101, sellers shall complete the activities required set forth in this section.
15. Pursuant to 40 C.F.R. § 745.107(a)(1), the seller shall provide the purchaser with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.
16. Pursuant to 40 C.F.R. § 745.107(a)(2), the seller shall disclose to the purchaser the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold. The seller shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
17. Pursuant to 40 C.F.R. § 745.107(a)(3), the seller shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
18. Pursuant to 40 C.F.R. § 745.107(a)(4), the seller shall provide the purchaser with any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.
19. Pursuant to 40 C.F.R. § 745.110(a), before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.
20. Pursuant to 40 C.F.R. § 745.110(b), notwithstanding 40 C.F.R. § 745.110(a), a purchaser may waive the opportunity to conduct a risk assessment or inspection by so indicating in writing.
21. Pursuant to 40 C.F.R. § 745.113(a)(1), each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish), a Lead Warning Statement consisting of the following language: Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk

assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

22. Pursuant to 40 C.F.R. § 745.113(a)(2), each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish), a statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
23. Pursuant to 40 C.F.R. § 745.113(a)(3), each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish), a list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.
24. Pursuant to 40 C.F.R. § 745.113(a)(4), each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish), a statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. § 2686.
25. Pursuant to 40 C.F.R. § 745.113(a)(5), each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish), a statement by the purchaser that he/she has either: received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a); or waived the opportunity.
26. Pursuant to 40 C.F.R. § 745.113(a)(6), each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish), a statement that the agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and the agent is aware of his/her duty to ensure compliance with the requirements of this subpart.
27. Pursuant to 40 C.F.R. § 745.113(a)(7), each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish), the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.
28. Pursuant to 40 C.F.R. § 745.113(c)(1), the seller, and any agent, shall retain a copy of the completed attachment required under 40 C.F.R. § 745.113(a) of this section for no less than 3 years from the completion date of the sale.
29. Pursuant to 40 C.F.R. § 745.115(a)(1), each agent shall inform the seller of his/her obligations under 40 C.F.R. §§ 745.107, 745.110, and 745.113.
30. Pursuant to 40 C.F.R. § 745.115(a)(2), each agent shall ensure that the seller has performed all activities required under 40 C.F.R. §§ 745.107, 745.110, and 745.113, or personally ensure

compliance with the requirements of 40 C.F.R. §§ 745.107, 745.110, and 745.113.

#### IV. FINDINGS OF FACT

31. Respondent is, and at all times relevant to this CAFO, an “agent” that entered into contracts with a seller, as those terms are defined under 40 C.F.R. § 745.103, for the purpose of selling “residential dwellings” that are “target housing” as those terms are defined at 40 C.F.R. § 745.103.
32. On November 21, 2019, an inspector with the EPA conducted an inspection at the Respondent’s place of business located at 2901 Old Taylor Road, Suite 201, Oxford, Mississippi 38655, for the purpose of evaluating the Respondent’s compliance with the requirements of 40 C.F.R. Part 745, Subpart F.
33. At the time of the inspection, the EPA reviewed and obtained copies of the Respondent’s records to determine its compliance with 40 C.F.R. Part 745, Subpart F.
34. During the inspection, the EPA reviewed certain records showing that between December 2016 and December 2019, the Respondent had represented the seller for the purpose of selling the residential dwellings that are target housing at the following locations on the specified dates listed below:
  - a. 560 County Road 275, Water Valley, Mississippi 38965, built in 1974, contracted for sale on December 21, 2016;
  - b. 617 Wagner Street, Water Valley, Mississippi 38965, built in 1968, contracted for sale on December 5, 2018;
  - c. 300 Clay Street, Water Valley, Mississippi 38965, built in 1923, contracted for sale on June 22, 2019;
  - d. 300 Williams Avenue, Oxford, Mississippi 38655, built in 1950, contracted for sale on December 1, 2018;
  - e. 3018 County Road 53, Water Valley, Mississippi 38965, built in 1968, contracted for sale on December 13, 2016;
  - f. 206 Calhoun Street, Water Valley, Mississippi 38965, built in 1936, contracted for sale on March 21, 2017; and
  - g. 18 County Road 401, Oxford, Mississippi 38655, built in 1950, contracted for sale on November 20, 2018.
35. At the time of the inspection, the Respondent was unable to provide any records to the inspector documenting that prior to the purchasers being obligated under the contracts, the Respondent had:
  - a. Included as an attachment to the contract to sell target housing a list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser or that no such records or reports are available as required by 40 C.F.R. § 745.113(a)(3) for the target housing listed

in 34(g);

- b. Included as an attachment to the contract to sell target housing, a statement by the purchaser affirming receipt of the information required under 40 C.F.R. § 745.113(a)(2) and 40 C.F.R. § 745.113(a)(3), and the lead hazard pamphlet required under 15 U.S.C. § 2686 in accordance with 40 C.F.R. § 745.113(a)(4) for the target housing listed in 34(c);
- c. Included as an attachment to the contract to sell target housing, a statement by the purchaser that they have either: received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a); or waived the opportunity, as required by 40 C.F.R. § 745.113(a)(5) for the target housing listed in 34(d); and
- d. Included as an attachment to the contract to sell target housing the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature, as required by 40 C.F.R. § 745.113(a)(7) for the target housing listed in 34(a), 34(b), 34(c), 34(e), 34(f), and 34(g).

## V. ALLEGED VIOLATIONS

36. Based on the EPA's review of the Respondent's records during the November 21, 2019, inspection, the EPA has determined that prior to finalizing a contract for the sale of residential dwellings of target housing on behalf of the seller/owner under which the purchaser became obligated to purchase the target property, the Respondent failed to:
- a. Include as an attachment to the contract to sell target housing a list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser or that no such records or reports are available in violation of 40 C.F.R. § 745.113(a)(3);
  - b. Include as an attachment to the contract to sell target housing, a statement by the purchaser affirming receipt of the information required under 40 C.F.R. § 745.113(a)(2) and 40 C.F.R. § 745.113(a)(3), and the lead hazard pamphlet required under 15 U.S.C. 2686 in violation of 40 C.F.R. § 745.113(a)(4);
  - c. Include as an attachment to the contract to sell target housing a statement by the purchaser that he/she has either: received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a); or waived the opportunity, in violation of 40 C.F.R. § 745.113(a)(5);
  - d. Include as an attachment to the contract to sell target housing the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature, in violation of 40 C.F.R. § 745.113(a)(7).

## VI. STIPULATIONS

37. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
38. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
  - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the conditions specified in this CAFO;
  - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
  - f. waives its rights to appeal the Final Order accompanying this CAFO.
39. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
  - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - c. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
  - d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart F, promulgated under the authority of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, also known as Title X of the Housing and Community Development Act of 1992 and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
  - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
  - f. agrees to comply with the terms of the CAFO.
40. In accordance with 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email and the individuals named in the certificate of service are authorized to receive service related to this proceeding.

## VII. TERMS OF PAYMENT

41. Respondent is assessed a civil penalty of **THREE-THOUSAND, TWO-HUNDRED NINETY-ONE DOLLARS (\$3,291)** which shall be paid within thirty (30) days after the effective date of this CAFO.

42. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Code: SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

43. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4

61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[bullock.patricia@epa.gov](mailto:bullock.patricia@epa.gov)

And

Elmore Johnson  
Land, Asbestos and Lead Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[johnson.elmore@epa.gov](mailto:johnson.elmore@epa.gov)

44. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. TSCA-04-2020-3106(b).
45. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, EPA may require the Respondent to pay the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b)(2), and 40 C.F.R. § 13.11(a).
  - b. Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
  - c. Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
46. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- a. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
  - b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
  - c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
  - d. refer the debt to the Department of Justice for litigation as provided in 40 C.F.R. § 13.33.
47. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

### **VIII. EFFECT OF THE CAFO**

48. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
49. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
50. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
51. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
52. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
53. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
54. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the company, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
55. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information

or personally identifiable information.

56. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
57. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
58. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
59. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
60. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
61. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **IX. EFFECTIVE DATE**

62. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**[Remainder of Page Intentionally Left Blank**

**Complainant and Respondent will Each Sign on Separate Pages]**



The foregoing Consent Agreement In the Matter of **Kessinger Real Estate, LTD.**, Docket No. **TSCA-04-2020-3106(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

---

Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Kessinger Real Estate, LTD.**

Respondent.

Docket No. **TSCA-04-2020-3106(b)**

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED.**

---

Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **Kessinger Real Estate, LTD.**, Docket No. **TSCA-04-2020-3106(b)**, were filed and copies of the same were emailed to the parties as indicated below.

### Via email to all Parties:

#### **For the Respondent:**

Mr. Keith Kessinger  
Broker/Owner  
Kessinger Real Estate, LTD.  
[keith@kessingerrealestate.com](mailto:keith@kessingerrealestate.com)

#### **For the EPA:**

Elmore Johnson  
Land, Asbestos and Lead Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
[johnson.elmore@epa.gov](mailto:johnson.elmore@epa.gov)

Robert Caplan, Senior Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
[caplan.robert@epa.gov](mailto:caplan.robert@epa.gov)

---

Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960