



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 21 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9196

Keith E. Giancola
5723 New Castle Road
Lowellville, Ohio 44435-9514

Consent Agreement and Final Order, Docket No. TSCA-05-2007-0015

Dear Mr. Giancola:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 21, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$735 is to be paid in the manner prescribed in paragraphs 39, 40 and 41. Please be certain that the number **BD 2750747X014** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 20, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Estrella Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Robert Guenther, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	PROCEEDING TO ASSESS TSCA-05-2007-0015
KEITH E. GIANCOLA)	A CIVIL PENALTY UNDER
LOWELLVILLE, OHIO,)	SECTION 16(a) OF THE TOXIC
)	SUBSTANCES CONTROL ACT
RESPONDENT.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative action commenced and concluded under the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA or Agency), Region 5 by section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) and sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. part 22.

2. Complainant is, by lawful delegation, the Chief of the Chemicals Management Branch, Land and Chemicals Division, U.S. EPA, Region 5.

3. Respondent is Keith E. Giancola, who resides at 5723 New Castle Road, Lowellville, Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, 40 C.F.R. § 22.13(b) permits an administrative action to be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

STATUTORY AND REGULATORY BACKGROUND

6. Section 1018 of Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

7. Under 42 U.S.C. § 4852d, on March 6, 1996, U.S. EPA promulgated regulations at 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 (the Disclosure Rule).

8. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

9. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978.

10. 40 C.F.R. § 745.103 defines “owner” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals.

11. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals.

12. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals.

13. 40 C.F.R. § 745.113(a) requires, among other things, that each contract to sell target housing include as an attachment or within the sales contract a lead warning statement as provided in the regulation; a statement by the seller disclosing the presence of any known lead-based paint or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the seller regarding lead-based paints or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the purchaser

affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the Lead Hazard Information Pamphlet required by 15 U.S.C. § 2696; a statement by the purchaser that he or she received the opportunity to conduct a risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity to do so; and signatures and dates of signatures of the seller and purchaser certifying the accuracy of their statements.

14. 40 C.F.R. § 745.113(b) requires, among other things, that each contract to lease target housing include as an attachment or within the lease contract a lead warning statement as provided in the regulation; a statement by the lessor disclosing the presence of any known lead-based paint or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints or lead-based paint hazards in the target housing or a statement that no such records exist; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

15. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule is a violation of section 409 of TSCA, 15 U.S.C. § 2689, and subjects the violator to civil penalties under section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

ALLEGATIONS OF LIABILITY

GENERAL ALLEGATIONS

16. Between at least May 25, 2001, and April 1, 2004, Respondent owned residential properties in Youngstown, Ohio, including units at the following addresses: 229 Lora Avenue, 1442 Ohio Avenue, 1448 Ohio Avenue, 1655 Ohio Avenue, 176-178 Upland Avenue.

17. The residential properties listed in the paragraph above were each constructed prior to 1978.

18. The residential properties listed in paragraph 16, above, and each apartment unit within these buildings, are "target housing" as defined in 40 C.F.R. § 745.103.

19. On the following dates, Respondent, either directly or through Respondent's authorized agent, entered into the following four written lease agreements (contracts) with individuals for the lease of the following units:

Address	Unit	Date of Lease
1655 Ohio Avenue, Youngstown, Ohio	# 4	10/18/03
1655 Ohio Avenue, Youngstown, Ohio	# 5	05/01/03
176 Upland Avenue, Youngstown, Ohio	NA	08/01/03
178 Upland Avenue, Youngstown, Ohio	NA	08/01/03

20. Each of the 4 contracts referenced in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Between May 1 and October 18, 2003, Respondent, as the owner of the residential rental properties listed in paragraph 19, offered for lease units in those properties, and individuals entered into agreements to lease those units.

22. Respondent is a "lessor," as defined by 40 C.F.R. § 745.103, because he offered the target housing referenced in paragraph 19, above, for lease.

23. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the residential rental properties referenced in paragraph 19, above, became a "lessee" as defined in 40 C.F.R. § 745.103, because he or she entered into an agreement to lease target housing.

24. On the following dates, Respondent entered into the following three written sales agreements (contracts) with individuals for the sale of the following residential properties:

Address	Date
229 Lora Avenue, Youngstown, Ohio	07/29/03
1442 Ohio Avenue, Youngstown, Ohio	07/29/03
1448 Ohio Avenue, Youngstown, Ohio	07/29/03

25. Respondent is a “seller,” as defined by 40 C.F.R. § 745.103, because he transferred legal title to the target housing referenced in the table in paragraph 24, above, in whole or in part, in return for consideration.

26. Each individual who entered into an agreement to purchase an interest in the target housing, referenced in paragraph 24, above, became a “purchaser” as defined in 40 C.F.R. § 745.103, because he or she entered into an agreement to purchase target housing.

27. Complainant has determined that Respondent has violated the federal regulations regarding the disclosure of lead-based paint or lead-based paint hazards, 40 C.F.R. part 745, as described below, and thereby violated section 409 of TSCA, 15 U.S.C. § 2689.

SPECIFIC ALLEGATIONS

28. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract to lease the housing listed in the table in paragraph 19, a Lead Warning Statement before the lessees of the units listed in the table in paragraph 19 were obligated under each respective leasing contract as required by 40 C.F.R. §§ 745.100 and 745.113(b)(1).

29. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract to lease the housing listed in the table in paragraph 19, a statement disclosing either the presence of any known lead-based paint or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessees of the units listed in the table in paragraph 19 were obligated under each respective leasing contract, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(2).

30. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract, a list of any records or reports available to the lessor regarding

lead-based paint or lead-based paint hazards in the target housing, or a statement that no such records exist, before the lessees of the units listed in the table in paragraph 19 were obligated under each respective leasing contract, as required by 40 C.F.R. §§ 745.100 and 745.113(b)(3).

31. U.S. EPA alleges that Respondent failed to include, either within each contract to lease the units listed in the table in paragraph 19 or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signature, as required by 40 C.F.R. § 745.113(b)(6).

32. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract to sell the housing listed in the table in paragraph 24, a Lead Warning Statement before the purchasers of the residential rental properties listed in the table in paragraph 24 were obligated under each respective sales contract, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(1).

33. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract to sell the housing listed in the table in paragraph 24, a statement disclosing either the presence of any known lead-based paint or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, before the purchasers of the residential rental properties listed in paragraph 24 were obligated under each respective sales contract, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(2).

34. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract to sell the housing listed in paragraph 24, a list of any records or reports available to the seller regarding lead-based paint or lead-based paint hazards in the target housing, or a statement that no such records exist, before the purchasers of the residential

rental properties listed in the table in paragraph 24 were obligated under each respective sales contract, as required by 40 C.F.R. §§ 745.100 and 745.113(a)(3).

35. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract to sell the housing listed in paragraph 24, a statement by each purchaser affirming receipt of the information disclosures required by 40 C.F.R.

§§ 745.113(a)(2) and (a)(3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696, as required by 40 C.F.R. § 745.113(a)(4).

36. U.S. EPA alleges that Respondent failed to include, either within each contract or as an attachment to each contract to sell the housing listed in paragraph 24, the signatures of the seller and the purchaser certifying to the accuracy of their statements or the dates of such signature, as required by 40 C.F.R. § 745.113(a)(7).

CIVIL PENALTY

37. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. part 745, subpart F, authorize the Administrator of U.S. EPA to assess a civil penalty under section 16 of TSCA of up to \$10,000 for each violation of TSCA section 409. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997 (62 Fed. Reg. 35038) (1997). In determining the amount of any civil penalty, section 16 of TSCA requires U.S. EPA to take into account the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

38. In consideration of the factors delineated by TSCA, Respondent's cooperation

and other factors as justice may require, U.S. EPA agrees to mitigate the gravity-based penalty initially indicated by applicable Agency policies from \$17,490 to \$7,346. In consideration of Respondent's agreement to perform the Window Replacement Project specified in paragraphs 45 to 57, below, U.S. EPA agrees to further mitigate the penalty of \$7,346 to \$735.

39. Respondent will pay the \$735 civil penalty by cashier's or certified check or postal money order payable to the "*Treasurer, United States of America*," within 30 days after the effective date of this CAFO.

40. Respondent must send the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, Pennsylvania 15251-7531

41. Respondent must enclose with its payment a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document (BD) number. Respondent must write the case docket number and the BD number on the face of the check. The BD number may be found on the cover letter transmitting this CAFO. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Estrella Calvo (DT-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

42. If Respondent does not timely pay the civil penalty, or any stipulated penalties under paragraph 54, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. According to section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

44. This civil penalty is not deductible for federal tax purposes.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

45. Within four months after entry of this CAFO, Respondent must complete a Window Replacement Project (or Project) and lead clearance sampling designed to protect tenants from potential lead-based paint hazards by replacing windows in the rental property owned by Respondent located at 176-178 Upland Avenue, Youngstown, Ohio.

46. This Project must be completed according to Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, dated June 1995, and completed by individuals certified to perform such work under state and local laws and regulations.

47. Respondent must perform standard lead clearance testing upon completion of this Project using HUD Guidelines referenced in the paragraph above, and completed by individuals

certified to perform such work under state and local laws, at the property at 176-178 Upland Avenue, Youngstown, Ohio. The individual or company executing the standard lead clearance sampling must not be paid or employed or, otherwise compensated by the individuals performing the actual window replacement.

48. Respondent must spend at least \$6,611 to complete the Project and lead clearance sampling.

49. Respondent certifies that he is not required to perform this Project by any law, regulation, grant, order or any other legally-binding requirement as of the date Respondent executes this CAFO. Respondent further certifies that Respondent has not received, and is not negotiating to receive, credit for the Window Replacement Project in any other enforcement action.

50. U.S. EPA may inspect the property at any time to monitor Respondent's compliance with the requirements of this CAFO. With reasonable notice to Respondent, Respondent will permit access to the buildings or units subject to the Project and Respondent will make good faith efforts to obtain tenant cooperation for such access.

51. Upon completion of the SEP, and no later than four months after the filing of this CAFO with the Regional Hearing Clerk, Respondent must submit a report to Complainant detailing the work performed on 176-178 Upland Avenue, Youngstown, Ohio, and including the results of the lead clearance sampling. Specifically, this report must include the following information:

- a. a description of the SEP as completed at the property referenced in paragraph 45, above, which includes the sampling information contained in subparagraph b, below;
- b. a clearance sampling report for the property referenced in paragraph 45, above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;

c. an itemized list of costs of goods and services used to complete the Window Replacement Project documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services, including receipts for the cost of the lead based paint inspection conducted to identify the lead-based paint or lead-based paint hazards in the building;

d. an itemized list costs of services used to complete the lead clearance sampling documented by copies of invoices or canceled checks that specifically identify and itemize the costs of the services;

e. documentation that the individuals who performed the Window Replacement Project and the lead clearance sampling are certified to perform such work in accordance with the state and local laws and regulations; and

f. certification that Respondent has completed the Window Replacement Project and the lead clearance sampling in compliance with this CAFO.

52. Respondent must submit all notices and reports required by this CAFO by first class mail to Estrella Calvo, at the address in paragraph 41, above.

53. Each report submitted by Respondent or his agent under the terms of this CAFO must certify that the report is true and complete by including the following statement signed by the Respondent:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

54. If Respondent violates any requirements of this CAFO relating to the SEP and the required clearance sampling, Respondent must pay stipulated penalties to the United States as follows:

a. If Respondent does not complete the SEP according to this CAFO, Respondent must pay a stipulated penalty of \$6,611;

b. If Respondent satisfactorily completes the SEP according to this CAFO, but spends less than \$6,611, Respondent must pay the difference between \$6,611 and the actual amount spent;

c. If Respondent fails to ensure and document that lead clearance sampling work for the property listed in paragraph 45, above, is executed by individuals certified to perform such work in accordance with 40 C.F.R. part 745 and applicable state and local laws and regulations, Respondent must pay a stipulated penalty of \$3,306;

d. If Respondent fails to ensure and document that the SEP complies with the requirements of paragraphs 45 to 47, above, Respondent must pay a stipulated penalty of \$3,306; and

e. If Respondent fails to submit timely the SEP completion report and the lead clearance sampling completion report addressing each of the requirements in paragraph 51, above, or if Respondent fails to satisfactorily address each requirement in the window replacement completion report paragraphs of the CAFO, Respondent must pay a stipulated penalty of \$50 for each day after the report was due until the report is submitted in its entirety, not to exceed \$6,611.

55. U.S. EPA's reasonable and good faith determination of whether Respondent has satisfactorily completed the SEP and lead clearance sampling and whether Respondent made good faith, timely efforts to complete the SEP and lead clearance sampling will bind Respondent for the purposes of this CAFO.

56. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for them. All penalties will begin to accrue on the first date of noncompliance, and will continue to accrue through the date of satisfaction. Respondent will use the method of payment specified in paragraphs 39 through 41, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

57. The costs of the SEPs are not deductible or depreciable for federal tax purposes.

ADDITIONAL SETTLEMENT PROVISIONS

58. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

59. Respondent waives its right to request a hearing as provided at 40 C.F.R. §22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

60. Respondent certifies that, as of the effective date of this CAFO, it is in full compliance with the requirements of 40 C.F.R. part 745, subpart F, and intends to continue to comply fully with these provisions.

61. The parties consent to the terms of this CAFO.

62. This CAFO settles U.S. EPA's claims for civil penalties for violations the alleged herein.

63. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with TSCA or other applicable laws and regulations.

64. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Lead-Based Paint Hazard Reduction Act and other applicable federal, state and local laws and regulations.

65. The terms of the CAFO bind the Respondent and its assigns.

66. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the party for whom he or she represents and to bind that party to its terms.

67. Each party agrees to bear its own costs and fees in this action.

68. This CAFO constitutes the entire agreement between the parties.

69. This CAFO will become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5.

**Consent Agreement and Final Order
In the Matter of: Keith Giancola, Respondent**

Docket No. TSCA-05-2007-0015

8-4-07

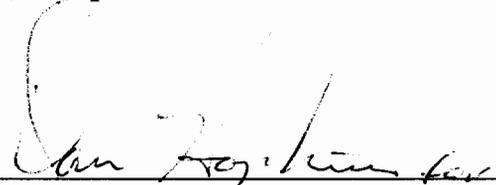
Date


Keith Giancola

United States Environmental Protection Agency, Complainant

8-9-07

Date


Mardi Klevs, Chief
Chemicals Management Branch
Land and Chemicals Division

8/14/07

Date


Margaret M. Guerriero, Director
Land and Chemicals Division

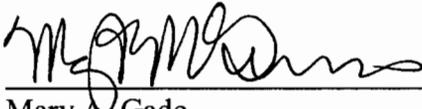
**In the Matter of:
Keith Giancola**

Docket No. TSCA-05-2007-0015

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8/17/07
Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

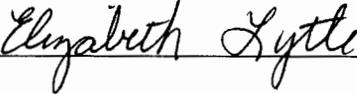
CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Keith E. Giancola, was filed on August 21, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8931 9196 , a copy of the original to the Respondents:

Keith E. Giancola
5723 New Castle Road
Lowellville, Ohio 44435-9514

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Luis Oviedo, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **TSCA-05-2007-0015**