



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

REPLY TO THE ATTENTION OF

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6020

Christopher Sammarone, Esquire
City Center One Building
Youngstown, Ohio 44503

Joseph A. Miklos, Youngstown, Ohio TSCA-05-2008-0023

Dear Mr. Sammarone:

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 September 4, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$500.00 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the number **BD 2750847X014** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 3, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Estrella Calvo
Pesticides and Toxic Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2008-0023
)	
Joseph A. Miklos,)	Proceeding to Assess a Civil
Youngstown, Ohio,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules), codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Joseph A. Miklos, of 1149 Old Furnace Road, Youngstown, Ohio, who does business as the J/M Company or JM Company.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
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.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. 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.

Statutory and Regulatory Background

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

10. On March 6, 1996, pursuant to 42 U.S.C. § 4852d, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, entitled “Disclosure of Known Lead-Based Paint or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property” (the Disclosure Rule) .

11. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978.

12. 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.

13. 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.

14. 40 C.F.R. § 745.103 defines “seller” as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals.

15. 40 C.F.R. § 745.103 defines “purchaser” as any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals.

16. 40 C.F.R. § 745.113(a) requires that each contract to sell target housing include an

attachment containing the following elements: a lead warning statement; 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 that have been provided to the purchaser regarding lead-based paint and/or lead-based paint hazards in target housing or a statement that no such records are available; 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*; a statement by the purchaser that he or she has received or waived the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a); and the signatures and dates of signatures of the seller, agent, and purchaser certifying the accuracy of their statements.

17. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; 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 are available; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet*; and the signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

18. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

19. Section 1018(b)(5) of the Lead Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f) authorize the EPA Administrator to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. Under 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19, EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997.

Factual Allegations and Alleged Violations

20. Between January 1, 2002 and December 9, 2003, Respondent owned residential rental properties in Youngstown, Ohio at 419 West Boston Avenue, 426 Breaden Street, 435 Breaden Street, 376 Cohasset Drive, 137 East Marion Avenue, 424 West Myrtle Avenue, and 1810 Overland Avenue (Respondent's properties).

21. Respondent's properties were all constructed prior to 1978 and therefore are "target housing" as defined in 40 C.F.R. § 745.103.

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

Address	Date of Lease
419 West Boston Avenue	04/01/2004
426 Breaden Street	12/09/2003
435 Breaden Street	09/01/2003
424 West Myrtle Avenue	07/21/2003

23. Each of the four contracts referred to in paragraph 22, above, covered a term of occupancy greater than 100 days.

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

25. Each individual who signed a lease to pay rent in exchange for occupancy of the

target housing referred to in paragraph 22, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

26. Respondent failed to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent’s properties at 426 Breden Street, and 424 West Myrtle Avenue, in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

27. Respondent failed to include 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, either within the contract or as an attachment to the contract for the lease of Respondent’s properties at 419 West Boston Avenue, 426 Breden Street, 435 Breden Street, and 424 West Myrtle Avenue, in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

28. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondent’s properties at 419 West Boston Avenue, 426 Breden Street, 435 Breden Street, and 424 West Myrtle Avenue, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

29. Respondent failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the *Lead Hazard Information Pamphlet* required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Respondent’s properties at 419 West Boston Avenue, 426 Breden Street, 435 Breden Street, and 424 West Myrtle Avenue, in violation of 40 C.F.R.

§ 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

30. Respondent failed to include the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Respondent's properties at 419 West Boston Avenue, 426 Breaden Street, 435 Breaden Street, and 424 West Myrtle Avenue, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

31. On the following dates, Respondent, either directly or through Respondent's authorized agent, entered into the following three written sales agreements (contracts) with individuals for the sale of target housing:

Address	Date of Sale
376 Cohasset Drive	10/09/2003
137 East Marion Avenue	08/09/2003
1810 Overland Avenue	10/09/2003

32. Respondent is a "seller," as defined in 40 C.F.R. § 745.103, because he transferred legal title of the target housing referred to in paragraph 31, above, in return for consideration.

33. The individuals who signed the contracts to purchase the target housing referred to in paragraph 31, above, became "purchasers," as defined in 40 C.F.R. § 745.103, because they each entered into an agreement to purchase an interest in target housing.

34. Respondent failed to include a lead warning statement, as an attachment to the contract to sell the target housing at 137 East Marion Avenue, in violation of 40 C.F.R. § 745.113(a)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

35. Respondent failed to include a statement disclosing either the presence of any known lead-based paint or lead-based paint hazards in the target housing being sold or a lack of knowledge of such presence, as an attachment to the contract to sell target housing at 137 East Marion Avenue, in violation of 40 C.F.R. § 745.113(a)(2), 15 U.S.C. § 2689, and

42 U.S.C. § 4852d(b)(5).

36. Respondent failed to include a list of records or reports available to the seller pertaining to lead-based paint or lead-based paint hazards in the target housing that have been provided to the purchaser or a statement that no such records or reports are available, as an attachment to the contracts to sell target housing at 376 Cohasset Drive, 137 East Marion Avenue, and 1810 Overland Avenue, in violation of 40 C.F.R. § 745.113(a)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

37. Respondent failed to include 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 under 15 U.S.C. § 2696, as an attachment to the contracts to sell target housing at 376 Cohasset Drive, 137 East Marion Avenue, and 1810 Overland Avenue, in violation of 40 C.F.R. § 745.113(a)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

38. Respondent failed to include a statement by the purchaser that he or 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, as an attachment to the contracts to sell target housing at 376 Cohasset Drive, 137 East Marion Avenue, and 1810 Overland Avenue, in violation of 40 C.F.R. § 745.113(a)(5), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

39. Respondent failed to include the signatures of the seller, agent, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature, as an attachment to the contracts to sell target housing at 376 Cohasset Drive, 137 East Marion Avenue, and 1810 Overland Avenue, in violation of 40 C.F.R. § 745.113(a)(7), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Civil Penalty

40. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is **\$500**. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* dated December 2007. In particular, Complainant considered financial information submitted by Respondent in response to correspondence relating EPA's intent to file an administrative complaint in this matter, and that information demonstrated Respondent's significantly limited ability to pay any penalty to resolve the violations.

41. Within 30 days after the effective date of this CAFO, Respondent must pay the **\$500** civil penalty for the TSCA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must state the docket number of this CAFO, and the billing document number, discussed below.

42. Respondent should accompany the payment with a transmittal letter stating Respondent's name, complete address, the case docket number and the billing document (BD) number. Respondent shall 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 Blvd.
Chicago, Illinois 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

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

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

44. If Respondent does not pay the civil penalty timely, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under 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.

45. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

47. This CAFO does not 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.

48. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule or any other applicable federal, state, and local laws.

49. Respondent certifies that he is complying with the Lead Act and the Disclosure Rule.

50. The terms of this CAFO bind Respondent, his successors and assigns.

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

52. Each party agrees to bear its own costs and attorney's fees in this action.

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

Joseph A. Miklos, Respondent

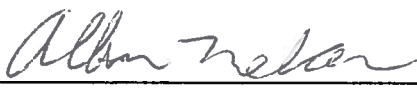
8-7-08
Date



Joseph A. Miklos
Respondent

United States Environmental Protection Agency, Complainant

8/29/08
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

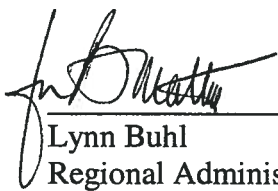
In the Matter of:
Joseph A. Miklos
Docket No. TSCA-05-2008-0023

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall 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.

9-2-08
Date



Lynn Buhl
Regional Administrator
United States Environmental Protection Agency
Region 5


CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administration involving Christopher Sammarone, Esquire, City Center One Building, was filed on September 4, 2008, with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7001 0320 0005 8921 6020, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Christopher Sammarone, Esquire
City Center One Building
Youngstown, Ohio 44503

and forwarded intra-Agency copies to:

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


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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