



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

APR 26 2007

REPLY TO THE ATTENTION OF:
DI-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5546

Mark R. King
337 West Indianola
Youngstown, Ohio 44511

Joint Complaint Consent Agreement and Final Order, Docket No. FSCA-05-2007-0010

Dear Mr. King:

I have enclosed a copy of an original fully executed Joint Complaint and Consent Agreement and Final Order in resolution of the above case. This document was filed on April 26, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,610 is to be paid in the manner prescribed in paragraphs 38, 39 and 40. Please be certain that the number **BD 2750747X010** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 29, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Estrella Calvo
Pesticides and Toxics Branch

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Mark R. King)
Youngstown, Ohio)
)
Respondent.)
_____)
)

DOCKET No. TSCA-05-2007-0010

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Joint Civil Complaint and
Consent Agreement and Final Order

Complainant, United States Environmental Protection Agency, (U.S. EPA), Region 5, and Respondent Mark R. King (Respondent) (“collectively “Parties”), wishing to settle all matters pertaining to this case and having consented to the entry of this Joint Civil Complaint and Consent Agreement and Final Order (CAFO); NOW THEREFORE, before the taking of any testimony, without the adjudication of any issues of law or fact herein, the Parties consent to the entry of and agree to comply with the terms of the CAFO.

I. Authority and Jurisdiction

1. This is a civil administrative action issued under the authority vested in the Administrator of the U.S. EPA by Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.

3. The Respondent is Mark R. King, Mark R. King, also known as Mark King Property Group, M.A.C.K Properties Group, and MACK Property Group with a place of business at 337 West Indianola, Youngstown, Ohio 44511.

4. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b), provide that where the Parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO.

II. Statutory and Regulatory Requirements

5. 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.

6. 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 (Disclosure Rule).

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

8. 40 C.F.R. § 745.103 defines "target housing" as 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. 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, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and nonprofit organizations.

10. 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, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

11. 40 C.F.R. § 745.113(b)(1) of the Disclosure Rule requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a lead warning statement before a lessee is obligated under the contract to lease target housing.

12. 40 C.F.R. § 745.113(b)(2) requires the lessor to include, as an attachment to or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

13. 40 C.F.R. § 745.113(b)(3) requires the lessor to include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that has been provided to the lessee. If no such records or reports are available, the lessor must so indicate.

14. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the contract to lease target housing.

15. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the

dates of signature before a lessee is obligated under the contract to lease target housing.

16. 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, which subjects the violator to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

III. Stipulated Facts

17. Between February 10, 1999 and July 22, 2005, Respondent owned residential rental properties in Youngstown, Ohio at the following addresses: 709 Avondale; 237 East Boston; 350 Camden; 3438 Hudson; 64 E. Lucius Avenue; 859 Parkview; 316 Pasadena; 319 Pasadena; and 63 East Ravenswood.

18. Each Residential Rental Property is "target housing" as defined in 40 C.F.R. § 745.103.

19. On the following dates, Respondent entered into the following nine written lease agreements (Contracts) with individuals for the lease of the Residential Rental Properties identified below:

| Address | Date of Lease |
|---------------------|----------------------|
| 709 Avondale | 08/09/2004 |
| 237 East Boston | 06/20/2002 |
| 350 Camden | 12/14/2003 |
| 3438 Hudson | 09/23/2003 |
| 64 E. Lucius Avenue | 09/15/2003 |
| 859 Parkview | 09/05/2003 |
| 316 Pasadena | 12/05/2001 |
| 319 Pasadena | 10/25/2001 |
| 63 East Ravenswood | 07/14/2003 |

20. Each of the nine Contracts, referenced in the table in paragraph 19, above, covered a term of occupancy greater than 100-days.

21. Respondent is a “lessor,” as defined by 40 C.F.R. § 745.103, since he has offered the target housing, referenced in the table in paragraph 19, above, for lease.

22. Each individual who entered into an agreement to pay rent in exchange for occupancy of the Residential Rental Properties, became a “lessee,” as defined in 40 C.F.R. § 745.103.

23. The Parties executed agreements to toll any statute of limitations for the period of time between October 23, 2006 and April 2, 2007, to facilitate this settlement.

IV. Alleged Violations

24. U.S. EPA alleges that Respondent failed to include, either within the contract for the lease of the Residential Rental Property or as an attachment to the contract, a lead warning statement before the lessees at 350 Camden, 3438 Hudson, 64 E. Lucius Avenue, 859 Parkview, 316 Pasadena, and 319 Pasadena were obligated under the Contracts referenced in paragraph 19, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. § 745.113(b)(1).

25. U.S. EPA alleges that Respondent failed to include, either within the contract for the lease of the Residential Rental Property or as an attachment to the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, before the lessees at 709 E. Avondale, 350 Camden, 3438 Hudson, 64 E. Lucius Avenue, 859 Parkview, 316 Pasadena, 319 Pasadena, and 63 E. Ravenswood were obligated under the Contracts referenced in paragraph 19, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. § 745.113(b)(2).

26. U.S. EPA alleges that Respondent failed to include, either within the contract for the lease of the Residential Rental Property or as an attachment to the contract, a list of any records or reports available to the lessor that pertain to lead-based paint and/or lead-based paint hazard information or indicate that no such list exists, before the lessees at 709 E. Avondale, 350 Camden, 3438 Hudson, 64 E. Lucius Avenue, 859 Parkview, 316 Pasadena, 319 Pasadena, and 63 E. Ravenswood were obligated under the Contracts referenced in paragraph 19, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. § 745.113(b)(3).

27. U.S. EPA alleges that Respondent failed to include, either within the contract for the lease of the Residential Rental Property or as an attachment to the contract, a statement by the lessees affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet before the lessees at 709 E. Avondale, 350 Camden, 3438 Hudson, 64 E. Lucius Avenue, 859 Parkview, 316 Pasadena, 319 Pasadena, and 63 E. Ravenswood were obligated under the Contracts referenced in paragraph 19, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. § 745.113(b)(4).

28. U.S. EPA alleges that Respondent failed to include, either within the contract for the lease of the Residential Rental Property or as an attachment to the contract, the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signature before the lessees at 709 E. Avondale, 237 E. Boston, 350 Camden, 3438 Hudson, 64 E. Lucius Avenue, 859 Parkview, 316 Pasadena, 319 Pasadena, and 63 E. Ravenswood were obligated under the Contracts referenced in paragraph 19, as required by 40 C.F.R. §§ 745.100 and 40 C.F.R. § 745.113(b)(6).

V. Penalty Calculation

29. 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 assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997. 40 C.F.R. § 19.2 (61 Fed. Reg. 69361 [1996]).

30. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violators, ability to pay, effect 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.

31. In consideration of the cooperation displayed by the Respondent, the immediate efforts taken to comply with the Disclosure Rule, and the manner in which the Parties reached settlement in this matter, U.S. EPA agrees to mitigate the proposed penalty from \$108,724 to \$76,110.

32. In consideration of Respondent's agreement to perform the Hazard Abatement Project specified in paragraphs 44 through 56, below, U.S. EPA agrees to further mitigate the penalty of \$76,110 to \$7,610.

VI. Opportunity to Request a Hearing

33. Upon affixing his signature to this agreement, Respondent waives all rights to request a judicial or administrative hearing under the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and the Consolidated Rules on any issue of law or fact set forth in

this CAFO, including, but not limited to, his right to request a hearing, and his right to appellate review of the final order. This waiver includes any right to contest the appropriateness of the amount of the proposed and final penalty.

VII. Terms of Settlement

34. Respondent admits the jurisdictional allegations contained in this Consent Agreement and Final Order and neither admits nor denies the factual allegations contained in this CAFO.

35. Respondent waives his right to a hearing on the allegations in this CAFO, and his right to appeal. 40 C.F.R. § 22.18.

36. Respondent certifies that upon the effective date of this CAFO, he is complying fully with 40 C.F.R. Part 745, Subpart F, and intends to continue to comply fully with 40 C.F.R. Part 745, Subpart F.

37. The Parties consent to the terms of this CAFO.

38. Respondent shall pay the \$7,610 civil penalty by cashier's or certified check payable to the "*Treasurer, United States of America,*" within 30 days after the effective date of this CAFO.

39. Respondent shall send the check to:

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

40. Respondent shall 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 shall send copies of the check and transmittal letter to:

Regional Hearing Clerk, (E-13)
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

Mary McAuliffe (C-13J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

41. This civil penalty is not deductible for tax purposes.
42. If Respondent does not timely pay the civil penalty, or any stipulated penalties under paragraphs 56 through 58, 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action. TSCA Section 16(a)(4), 42 U.S.C. § 2615(a)(4).

43. Interest will accrue on any overdue amount from the date payment was due in accordance with 31 C.F.R. § 901.9(b). Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

Hazard Abatement Project

44. Respondent must complete a lead-based paint hazard abatement project ("Hazard

Abatement Project”) designed to protect tenants from potential lead-based paint hazards by abating lead-based paint hazards in a number of residential properties, primarily single-family homes, in Youngstown, Ohio. This Hazard Abatement Project is designed to permanently eliminate lead-based paint hazards and may include, but is not limited to, window replacement, the removal of lead-based paint, the permanent enclosure or encapsulation of lead-based paint, and the replacement of lead-based painted surfaces or fixtures.

45. The Hazard Abatement Project must be conducted in compliance with the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform such work under state and local laws and regulations.

46. Respondent must perform standard lead clearance testing upon completion of the Hazard Abatement Project using HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995), and executed by individuals certified to perform such work under state and local laws, for each property identified in subparagraph 53.a., below. The individuals conducting the Hazard Abatement Project and the individuals executing the standard lead clearance sampling must not be paid or employed or, otherwise compensated by the individuals conducting the Hazard Abatement Project.

47. Respondent must spend at least \$68,500 to complete the Hazard Abatement Project. The money expended on the Hazard Abatement Project is not deductible for tax purposes.

48. Respondent will fully fund the total amount of \$68,500 for the Hazard Abatement Project within thirty days after the effective date of this CAFO.

49. Respondent must complete the Hazard Abatement Project by November 1, 2008.

50. Respondent certifies that he is not required to perform the Hazard Abatement Project by any law, regulation, grant, order, or any other agreement, or as injunctive relief as of the date Respondent signs this CAFO. Respondent further certifies that he has not received, and is not negotiating to receive, credit for the Hazard Abatement Project in any other enforcement action.

51. Respondent shall not use any HUD assistance, including all HUD grants, as well as Community Development Block Grants, to perform the \$68,500 of abatement work required by this CAFO.

52. U.S. EPA may inspect the properties at any time to monitor Respondent's compliance with this CAFO's requirements. Any access to the Residential Rental Properties or units therein will be provided on reasonable notice to Respondent and Respondent will make good faith efforts to obtain tenant cooperation for such access.

53. Respondent must submit a Hazard Abatement Project report and lead clearance sampling report upon completion of the Hazard Abatement Project for the properties listed in paragraph 19, above, by November 30, 2008. These reports must contain the following information:

- a. the addresses of the residential properties (including the number of units for multi-family housing) and a description of the Hazard Abatement Project as completed, which includes the sampling information contained in subparagraph b, below;
- b. a clearance sampling report for the properties identified in subparagraph 53.a., above, giving sampling locations, sample results, and documentation of analytical quality assurance/quality control;
- c. itemized costs of goods and services used to complete the Hazard Abatement 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 and/or lead-based paint hazards in the properties;

d. itemized 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, and documentation that Respondent did not use any HUD assistance, including all HUD grants as well as Community Development Block Grants, to perform the abatement work required by this CAFO;

e. provide documentation that the individuals who performed the Hazard Abatement 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 Hazard Abatement Project and the lead clearance sampling in compliance with this CAFO.

54. Respondent must submit all notices and reports required by the CAFO by first class mail to Estrella Calvo, at the address in paragraph 40, above.

55. In each report that Respondent submits as provided by this CAFO, he or his authorized representative 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.

56. If Respondent violates requirements of this CAFO relating to the Hazard Abatement Project and sampling, Respondent must pay stipulated penalties to U.S. EPA as follows:

a. If Respondent does not complete the Hazard Abatement Project and lead clearance sampling according to this CAFO, Respondent must pay a stipulated penalty of \$68,500;

b. If Respondent satisfactorily completes the Hazard Abatement Project and lead clearance sampling according to this CAFO, but spends less than \$68,500, Respondent must pay the difference between \$68,500, and the actual amount spent;

c. If Respondent fails to ensure and document that lead clearance sampling work for each property identified in subparagraph 53.a., 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, he shall pay a stipulated penalty of \$34,250;

d. If Respondent fails to ensure and document that the Hazard Abatement Project complies with the requirements of paragraphs 44 through 46, above, he shall pay a stipulated penalty of \$34,250; and

e. If Respondent fails to timely submit the Hazard Abatement Project completion report and the lead clearance sampling completion report addressing each of the requirements in paragraph 53, above, or if Respondent fails to satisfactorily address each requirement in the Hazard Abatement Project 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 \$68,500.

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

58. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. All penalties shall begin to accrue on the first date of noncompliance, and shall continue to accrue through the date of completion. Respondent will use the method of payment specified in paragraphs 38 through 40, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

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

60. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

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

62. The terms of the CAFO bind the Respondent and his assigns, and in the event of any conveyance of the subject property, the successors and assigns of said conveyance.

63. 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.

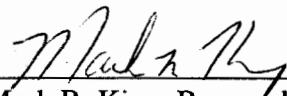
64. Each Party agrees to bear its own costs and fees in this action.

65. This CAFO constitutes the entire agreement between the Parties.

**Consent Agreement and Final Order
In the Matter of: Mark R. King**

Docket No. TSCA-05-2007-0010

Date: 4-16-07

By: 
Mark R. King, Respondent

In the Matter of:
Mark R. King

Docket No. TSCA-05-2007-0010

United States Environmental Protection Agency,
Complainant

Date: 4/20/07

By: Tony Marty, acting for Mr. Klevs
Mardi Klevs, Chief
Pesticides and Toxics Branch

Date: 4/20/07

By: Margaret M. Guerriero
Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

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**In the Matter of:
Mark R. King**

Docket No. TSCA-05-2007-0010

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. IT IS SO ORDERED.

Date: April 24, 2007

Walter W. Kovalich, Jr.

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

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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 Mark R. King, was filed on April 26, 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 8910 5546, a copy of the original to the Respondents:

Mark R. King
337 West Indianola
Youngstown, Ohio 44511

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Mary McAuliffe, 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-05-2007-0010**

APR 26 2007
REGIONAL HEARING CLERK
E-13J