UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

02 APR -5 PM 4:29
ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of	)	
	)	
LEROY LOVIN	)	
Plainville, Kansas	)	**Docket No.** TSCA-07-2002-0104
	)	
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

Introduction

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's 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, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Leroy Lovin, 603 N. Washington, Plainville, Kansas 67663.

Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count I

1. Leroy Lovin ("Respondent") is an individual person.

2. For all periods of time relevant to the violation alleged herein, Respondent owned a residential property located at 511 S. Madison, Plainville, Kansas (the "Property").

3. The Property was constructed prior to 1978.

4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.

5. On or about May 17, 2001, Respondent entered into a rental agreement (the "Contract") with Dallas Nuss and Amanda Shrole for the lease of Respondent's Property for residential use.

6. As a result of the Contract described in Paragraph 5 above, Respondent became a "lessor", and Dallas Nuss and Amanda Shrole became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

7. Dallas Nuss and Amanda Shrole subsequently moved into the Property along with their two children, ages two and three-year-old.

8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

9. Respondent did not provide an EPA-approved lead hazard information pamphlet to Dallas Nuss and Amanda Shrole prior to being obligated under the rental Contract described in Paragraph 5 above.

10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Dallas Nuss and Amanda Shrole prior to being obligated under the rental Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. Respondent waives his right to contest Complainant's allegations above, and his right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, he is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of One Thouseand Dollars ($1000.00) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondent understands that its failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to

recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently six percent (6%) per annum for the period January 1, 2001 through December 31, 2001) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of One Thouseand Dollars ($1000.00) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

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

RESPONDENT:
LEROY LOVIN

Date 3-19-2002 By _____
Leroy Lovin

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 3/29/02 By _____
William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date 4/2/02 By _____
Mike Gieryic
Assistant Regional Counsel

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

_____
Robert L. Patrick
Regional Judicial Officer

Date April 5, 2002

IN THE MATTER OF Leroy Lovin, Respondent
Docket No. TSCA-7-2002-0104

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Mike Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Leroy Lovin
603 N. Washington
Plainville, Kansas 67663

Dated: 4/9/2

Debby White for
Kathy Robinson
Regional Hearing Clerk