



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

January 30, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7641 3589

Mr. Richard Anderson  
ARK Property Investments, LLC  
5951 Cook Road  
Richmond, Indiana 47374

Consent Agreement and Final Order, In the Matter of ARK Property Investments, LLC  
Docket No. TSCA-05-2013-0004

Dear Mr. Anderson:

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 January 30, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$616.00 is to be paid in the manner described in paragraphs 45 and 46. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by March 1, 2013 (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 "Paul Fericelli".

Paul Fericelli  
Pesticides and Toxic Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
ARK Property Investments, LLC )  
Richmond, Indiana )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-05-2013-0004  
Proceeding to Assess a Civil Penalty  
Under Section 16(a) of the Toxic Substances  
Control Act, 15 U.S.C. § 2615(a)

**RECEIVED**  
JAN 30 2013  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

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 (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is ARK Property Investments, LLC, a Nevada limited liability company with a place of business located at 5951 Cook Road, Richmond, Indiana 47374.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the 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 general 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. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550, amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Sections 401 through 412, Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682(a), requires EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into

account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires EPA to promulgate regulations for conducting renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings.

13. Pursuant to 402(a) of TSCA, 15 U.S.C. § 2682(a), EPA promulgated regulations at 40 C.F.R. Part 745, titled lead-based paint poisoning prevention in certain residential structures, prescribing procedures and requirements for the accreditation of training programs and renovations, procedures and requirements for the certification of individual and firms engaged in lead-based paint activities, and work practice standards for performing such activities. *See* 61 Fed. Reg. 45778 (August 29, 1996).

14. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations at 40 C.F.R. Part 745 Subpart E, titled residential property renovation, prescribing procedures and requirements for renovation and remodeling activities, including the accreditation of training programs, certification of individuals and firms, and work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities. *See* 73 Fed. Reg. 21691 (April 22, 2008).

15. Under 40 C.F.R. § 745.81(a), each firm that performs for compensation a renovation of target housing or a child occupied facility must be certified by EPA and by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities in target housing and/or child occupied facilities, and must comply with the specified work practice and recordkeeping requirements at 40 C.F.R. §§ 745.85-86 by April 22, 2010. EPA stated that it would not take enforcement action for violations of the firm certification requirement until

October 1, 2010. See Memorandum from Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, dated June 18, 2010.

16. 40 C.F.R. § 745.83 defines “firm” to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

17. 40 C.F.R. § 745.83 defines “renovation” to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

18. 40 C.F.R. § 745.103 defines “target housing” to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

19. 40 C.F.R. § 745.83 defines “pamphlet” to mean the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under Section 406(a) of TSCA for use in complying with 406(b) of TSCA.

20. 40 C.F.R. § 745.89 provides that firms that perform renovations for compensation must apply and obtain certification from EPA to perform renovations or dust sampling. *See also* 40 C.F.R. § 745.85(a).

21. 40 C.F.R. § 745.85(a)(2)(ii)(C) provides that, for exterior renovations, the firm must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

22. 40 C.F.R. § 745.82(a)(2) provides that no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide an adult occupant of the unit with the pamphlet obtain from the occupant a written acknowledgement that the occupant had received the pamphlet or a certificate of mailing at least 7 days prior to the renovation.

23. Under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87, failure to comply with a provision of Subchapter IV of TSCA and its implementing regulations is unlawful, and may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

24. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

### General Allegations

25. Respondent is a limited liability company and is therefore a “firm,” as defined in 40 C.F.R. § 745.83.

26. Respondent conducts interior and exterior painting, renovation, remodeling, and repair work on buildings and has applied for and received certification from EPA to perform renovations pursuant to 40 C.F.R. § 745.89. Respondent’s certification expires on September 1, 2015.

#### The 9<sup>th</sup> Street Property

27. On July 12, 2011, the Indiana State Department of Health and EPA conducted an inspection to observe ongoing work conducted by Respondent on a single-family dwelling located at 400 South 9th Street, Richmond, Indiana (9<sup>th</sup> Street Property).

28. The work that Respondent was conducting at the 9<sup>th</sup> Street Property on July 12, 2011, described in paragraph 27, above, consisted of scraping and painting the exterior of the dwelling, wrapping windows and soffits, and trim repair work, and was therefore a “renovation,” as defined in 40 C.F.R. § 745.83.

29. The 9<sup>th</sup> Street Property was constructed in 1900 and is therefore “target housing” as defined in 40 C.F.R. § 745.103.

30. Respondent was required to perform the renovation referenced in paragraph 28, above, in accordance with the work practice standards in 40 C.F.R. § 745.85.

#### The 10<sup>th</sup> Street Properties

31. On August 16, 2011, EPA sent Respondent a Request for Information, requesting, among other things, all records for renovations performed by Respondent from April 22, 2010 to the present, and a copy of the EPA-approved pamphlet provided by Respondent for each

renovation.

32. On August 31, 2011, EPA received Respondent's response to the August 16, 2011 Request for Information (response letter).

33. Based on information contained in the response letter, from approximately October 23, 2011 through October 26, 2011, Respondent conducted work on residential properties located at 223, 225, 227, and 229 North 10th Street, Richmond, Indiana (10<sup>th</sup> Street Properties).

34. The work that Respondent conducted from approximately October 23, 2011 through October 26, 2011, described in paragraph 33, above, consisted of scraping and painting the exterior of the 10<sup>th</sup> Street Properties and resulted in the disturbance of painted surfaces, and was therefore a "renovation," as defined in 40 C.F.R. § 745.83.

35. The 10<sup>th</sup> Street Properties were constructed in 1920 and are each therefore "target housing" as defined in 40 C.F.R. § 745.103.

36. At the time of the renovation described in paragraph 34, above, adult occupants resided in the 10<sup>th</sup> Street Properties.

37. In performing the renovation described in paragraph 34, above, Respondent was required to comply with the information distribution requirements in 40 C.F.R. § 745.84.

### **Count 1**

38. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

39. During the renovation conducted at the 9<sup>th</sup> Street Property, described in paragraph 28, above, Respondent did not cover the ground with plastic sheeting or other impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, as required by 40 C.F.R.



§ 745.85(a)(2)(ii)(C).

40. Respondent's failure to cover the ground with plastic sheeting or other impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

**Count 2**

41. Complainant incorporates paragraphs 1 through 37 of this CAFO as if set forth in this paragraph.

42. For the renovation at the 10<sup>th</sup> Street Properties, described in paragraph 34, above, Respondent did not provide the adult occupants of the residential dwelling units with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* before beginning the renovation activities and did not obtain from the occupants a written acknowledgement that the occupants had received the pamphlet or a certificate of mailing at least 7 days prior to the renovation, as required by 40 C.F.R.

§ 745.84(a)(2).

43. Respondent's failure to provide the adult occupants of the residential units at the 10<sup>th</sup> Street Properties the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* before beginning the renovation activities and failure to obtain from the occupants a written acknowledgement that the occupants had received the pamphlet or a certificate of mailing at least 7 days prior to the renovation constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

**Civil Penalty**

44. 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 \$616. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to the violator, 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. Complainant also considered *EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010, and the *Pilot Renovation, Repair and Painting ("RRP") Rule Penalty Program for Micro-Businesses*, dated May 3, 2012.

45. Within 30 days after the effective date of this CAFO, Respondent must pay a \$616 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state the case title ("In the Matter of: ARK Property Investments LLC") and the docket number of this CAFO.

46. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

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

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

48. If Respondent does not timely pay the civil penalty, 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) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

49. 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**

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

51. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

52. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, and other applicable federal, state, and local laws.

53. Respondent certifies that it is complying with Section 402 of TSCA, 15 U.S.C. § 2682, and its implementing regulations at 40 C.F.R. Part 745.

54. The terms of this CAFO bind Respondent, and its successors and assigns.

55. 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.

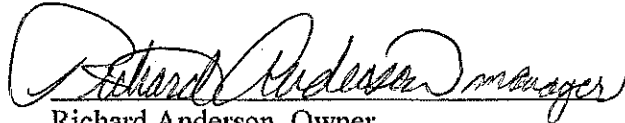
56. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

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

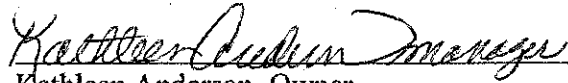
58. This CAFO constitutes the entire agreement between the parties.

**ARK Property Investments, LLC, Respondent**

1-3-13  
Date


  
Richard Anderson, Owner  
ARK Property Investments, LLC

Jan 3, 2013  
Date

  
Kathleen Anderson, Owner  
ARK Property Investments, LLC

**United States Environmental Protection Agency, Complainant**

1/24/2013  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

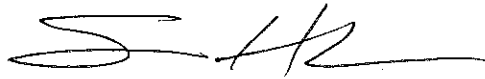
**In the Matter of:**  
**ARK Property Investments, LLC**  
**Docket No. TSCA-05-2013-0004**

**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.

1-28-13

Date



\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5



JAN 30 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY


**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 administrative action involving ARK Property Investments, LLC, was filed on January 30, 2013, with the Regional Hearing Clerk (E-19J), 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. 7009 1680 0000 7641 3589 to:

Mr. Richard Anderson  
ARK Property Investments, LLC  
5951 Cook Road  
Richmond, Indiana 47374

and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Kasey Barton, 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

Docket No. TSCA-05-2013-0004

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