

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez
Name of Case Attorney

11/28/11
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number TS:A-01-2011-0026

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Atlas Property Management, Inc. et al
224 - 224 A Washington Street Nominee
Realty Trust, Ilya M. Shnyder, Trustee,
and Archgate Townhouse, LLC,

Total Dollar Amount of Receivable \$ 3,500 Due Date: 12/22/11

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 1 - NEW ENGLAND
1 Congress Street, Suite 1100
Boston, MA 02114-2023

RECEIVED

2011 NOV 28 A 11: 31

EPA.ORG
OFFICE OF
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ
Direct: 617-918-1867

BY HAND

November 28, 2011

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: In Re: Atlas Property Management, Inc. et al., TSCA-01-2011-0026
Approved Consent Agreement and Final Order for Partial Case Settlement

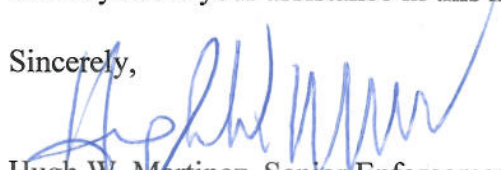
Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) partially resolving the above-referenced enforcement case. Specifically, the CAFO resolves all penalty claims alleged by EPA against one of three Respondents named in the case, Archgate Townhouses, LLC. Please note that EPA's penalty claims against the other two Respondents, Atlas Property Management, Inc. and 224-224A Washington Street Nominee Real Estate Trust (Ilya M. Shnyder, Trustee), remain outstanding and are not directly affected by this settlement with Archgate.

Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO and this cover letter were sent to each Respondent and to Chief Judge Biro, and hand delivered to you.

Thank you for your assistance in this matter.

Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA Region 1

Enclosure

cc: Mark Lichtenstein, Esquire [counsel for Archgate Townhouses, LLC]
Carl Lindley, Jr., Esquire [counsel for Atlas Property Management and 224-224A
Washington Street Nominee Realty Trust (Ilya M. Shnyder, Trustee)]
M. Molly Magoon, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

NOV 28 2011

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:)

Atlas Property Management, Inc.,)
224-224A Washington Street Nominee)
Realty Trust, Ilya M. Shnyder, Trustee,)
and Archgate Townhouses, LLC,)

Respondents.)

CONSENT AGREEMENT
AND FINAL ORDER
WITH ARCHGATE TOWNHOUSES, LLC

Docket No.
TSCA-01-2011-0026

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency - Region 1 ("EPA"), having issued a civil administrative Complaint on May 3, 2011, and then, on May 31, 2011, having issued an Amended Complaint against the above-listed Respondents in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22; and,

Complainant and Respondent Archgate Townhouses, LLC ("Archgate"), having agreed to all of the terms of this Consent Agreement and Final Order ("CAFO"); and,

Complainant and Respondent Archgate (collectively referred to in this CAFO as the "Parties"), having agreed that settlement of EPA's civil penalty claims against Archgate is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of settling such claims;

NOW THEREFORE, before the taking of any testimony, without any adjudication of issues of law or fact herein, the Parties agree to comply with the terms of this CAFO.

I. PRELIMINARY STATEMENT

1. EPA initiated the above-captioned proceeding for the assessment of civil penalties pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and 40 C.F.R. §§ 22.14(c) by filing the Amended Complaint against Respondent Archgate, as well as two other named Respondents, Atlas Property Management, Inc. and 224-224A Washington Street Nominee Realty Trust, Ilya M. Shnayder, Trustee (collectively, the "Other Respondents").

2. EPA alleged in its Amended Complaint that Archgate and the Other Respondents violated TSCA Section 409, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*, and federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, and set forth at 40 C.F.R. Part 745, Subpart F ("Disclosure Rule"). The Amended Complaint alleges that when leasing various apartments in ten separate buildings, one of which is owned by Archgate and each of which was constructed before 1978 ("target housing"), Respondents failed to:

(a) provide tenants with an EPA-approved lead hazard information pamphlet before they were obligated to rent or lease apartments, in violation of 40 C.F.R. § 745.107(a)(1) and TSCA Section 409;

(b) provide tenants with available records or reports pertaining to lead-based paint or lead-based paint hazards, in violation of 40 C.F.R. § 745.107(a)(4) and TSCA Section 409;

(c) include in leases or rental agreements or as an attachment thereto, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1) and TSCA Section 409; and

(d) include in leases or rental agreements or as an attachment thereto, a statement disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof, in violation of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409.

3. Respondent Archgate filed an Answer to the Amended Complaint, on or about July 1, 2011.

4. This CAFO shall apply to and be binding upon Respondent Archgate and its successors and assigns, including, but not limited to, subsequent purchasers. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.

5. Respondent Archgate stipulates that, in the Amended Complaint, EPA states a claim upon which relief can be granted. Archgate waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Amended Complaint, consents to the terms of this CAFO.

6. Respondent Archgate hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Amended Complaint and its right to appeal the Final Order accompanying the Consent Agreement.

II. TERMS OF SETTLEMENT

7. Respondent Archgate hereby certifies that it is in compliance with the Disclosure Rule.

8. Pursuant to Section 16(a) of TSCA, in light of the nature of the violations, Respondent Archgate's financial ability to pay a penalty, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of three thousand five hundred dollars (\$3,500).

9. Without admitting or denying the factual and legal allegations contained in the Amended Complaint, Respondent Archgate consents to the issuance of this CAFO and consents to the payment of the civil penalty cited in the foregoing paragraph.

10. Within 30 days of the effective date of this CAFO, Respondent Archgate shall make payment by submitting a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of \$3,500, to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall provide a copy of the check to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES 04-3)
Boston, MA 02109-3912.

The check shall bear the name and docket number of this action (i.e., "*In the Matter of: Atlas Property Management, Inc. et al.*, EPA Docket No. TSCA-01-2011-0026"). Interest and late charges, if applicable, shall be paid as specified in Paragraph 12 herein.

11. The penalty specified in Paragraphs 8 and 10, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal and state taxes. Accordingly, Respondent Archgate agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

12. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Pursuant to 31 C.F.R. § 901.9(d), any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

13. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law. Nor shall this CAFO be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nothing in this CAFO is intended, nor shall be construed, to operate in any way to resolve any civil liability of the Other Respondents for monetary penalties, as alleged in the Amended Complaint.

15. This CAFO constitutes a settlement by EPA of the claims for civil penalties set forth in the Amended Complaint pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) (for violations of TSCA Section 409, 15 U.S.C. § 2689), the Residential Lead-Based Paint Hazard

Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*, and the Disclosure Rule at 40 C.F.R. Part 745, Subpart F. Nothing in this CAFO is intended, nor shall be construed, to operate in any way to resolve any criminal liability of the Respondent. Nothing in this CAFO shall be construed as limiting the authority of the United States to undertake any action against Respondent Archgate in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment.

16. Each undersigned representative of the Parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

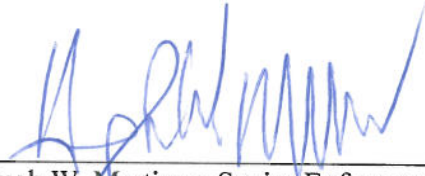
17. Each Party shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

For EPA:



Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA - Region 1

Date: 11/15/11

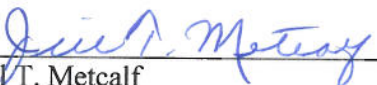


Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA - Region 1

Date: 11-4-11

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent Archgate is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



Jill T. Metcalf
Acting Regional Judicial Officer
U.S. EPA - Region 1



Date

In re: Atlas Property Management et al.
TSCA-01-2011-0026

CERTIFICATE OF SERVICE

I, Hugh W. Martinez, hereby certify that on this 28th day of November 2011, I caused the foregoing Consent Agreement and Final Order, along with a cover letter to the Regional Hearing Clerk, to be served on the following persons in the manner indicated:

Original and One Copy by Hand Delivery

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

One Copy by Fax [202-565-0044] and Pouch Mail

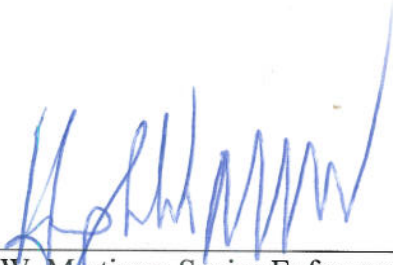
The Honorable Susan L. Biro
Chief Administrative Law Judge and Presiding Officer
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

One Copy, Electronically (.pdf by e-mail) and by Overnight Delivery

Mark Lichtenstein, Esquire
Kerstein, Coren & Lichtenstein, LLP
60 Walnut Street
Wellesley, MA 02481

and

Carl Lindley, Jr., Esquire
Law Office Carl Lindley
220 Linden Street
Holyoke, MA 01040



Hugh W. Martinez, Senior Enforcement Counsel
EPA Region 1