



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

NOV 29 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven D. Bell & Co.
Attn: Mark Vernon
221 Roswell St
Suite 100
Alpharetta, GA 30004

SUBJ: Consent Agreement and Final Order
Docket No. TSCA-04-2008-2513(b)

Dear Mr. Vernon:

Enclosed please find an executed copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The CAFO is effective as of the date of filing with the Regional Hearing Clerk. Because the quarterly penalty payment of one thousand four hundred thirty seven dollars and fifty nine cents (\$1,437.59) was paid at the time you signed the CAFO and before the CAFO was ratified, your next scheduled payment is due within 120 days of the effective date of this CAFO

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

If you have any questions, please contact Kevin Woodruff of the EPA Region 4 staff at (404) 562-8828.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joanne Benante".

Joanne Benante
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
 Merrick Timberwoods, LLC)
 d/b/a Merrick Place Apartments)
)
 Respondent)
 _____)

Docket Number: TSCA-04-2008-2513(9)

RECEIVED
EPA REGION 4
2007 NOV 29 PM 3:55
HEARING CLERK

CONSENT AGREEMENT FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Merrick Timberwoods, LLC d/b/a Merrick Place Apartments (hereinafter, "Respondent").

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The Administrator of EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F under the authority of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Pursuant to 42 U.S.C. § 4852d(b)(5), a violation of any rule in 40 C.F.R. Part 745, is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689. Any person who violates Section 409 of TSCA may be assessed a penalty of up to \$10,000 for each such violation, in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and Section 1018. For a violation occurring after January 31, 1997, a penalty of up to \$11,000 may be assessed pursuant to 40 C.F.R. Part 19, and in accordance with 40 C.F.R. § 745.118(f).

4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

III. Specific Allegations

5. Respondent is a lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 3190 Skinner Mill Road, Augusta, Georgia 30909. This residential housing is “target housing,” as defined at 40 C.F.R. § 745.103.

6. Based on information obtained by EPA on or about February 15, 2007, relating to Respondent’s contracts to lease its target housing described above, EPA alleges that Respondent violated Section 409 of TSCA and the requirements noted in the EPA Notice of Violation. The penalty associated with this action is based on the following regulations:

- Pursuant to 40 C.F.R. § 745.107(a)(1), a Lessor shall provide the Lessee an EPA-approved lead hazard information pamphlet before the Lessee is obligated under any contract to Lease target housing.

Respondent failed to provide Lessee an EPA-approved pamphlet.

- Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment to or within the contract, a “Lead Warning Statement”.

Respondent failed to include the required “Lead Warning Statement”.

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

Respondent failed to include an appropriate statement.

- Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall 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 have been provided to the Lessee, or an indication that no such records or reports are available.

Respondent failed to include the appropriate information.

IV. Consent Agreement

7. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

8. Respondent waives its right to a hearing on the allegations contained herein.

9. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

10. Respondent certifies that as of the date of its execution of this CAFO, it is otherwise in compliance with the requirements of 40 C.F.R. Part 745, Subpart F.

11. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or pursue criminal enforcement.

12. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of 40 C.F.R. Part 745, Subpart F.

V. Final Order

13. Respondent is assessed a civil penalty of Eleven Thousand Dollars (\$11,000.00) plus interest, which is to be paid over a two year period in eight (8) quarterly payments of Fourteen Hundred and Thirty Seven Dollars and Fifty Nine Cents (\$1437.59), totaling Eleven Thousand, Five Hundred Dollars and Seventy Two Cents. These quarterly payments shall begin within thirty (30) calendar days of the effective date of this CAFO, and subsequent payments in three month intervals over a period of two years. Respondent shall make payments in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Due</u>
Within 30 days of filing CAFO	\$1437.59
Within 120 days of filing CAFO	\$1437.59
Within 210 days of filing CAFO	\$1437.59
Within 300 days of filing CAFO	\$1437.59
Within 390 days of filing CAFO	\$1437.59
Within 480 days of filing CAFO	\$1437.59
Within 570 days of filing CAFO	\$1437.59
Within 660 days of filing CAFO	\$1437.59

14. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to the following address:

For payment submittal by U.S. Postal Service:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.)

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

15. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Kevin Woodruff
Children's Health, Lead &
Asbestos Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303.

16. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

17. 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 the civil penalty from the date of entry of this CAFO if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.

18. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

19. This CAFO shall be binding upon the Respondent, its successors and assigns.

20. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Kevin Woodruff
Children's Health, Lead &
Asbestos Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8828


21. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VI. Effective Date

22. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

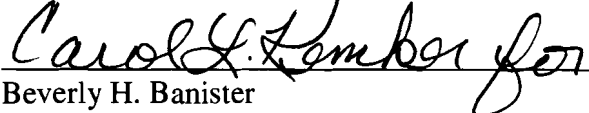
MERRICK TIMBERWOODS, LLC d/b/a MERRICK PLACE APARTMENTS - TSCA-
~~04-2007-2552(b)~~ 04-2008-2513 K LW

By:  Date: 7/14/2007

Name: Jerry C. Wilkinson (Typed or Printed)

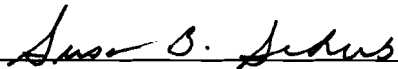
Title: Managing member (Typed or Printed)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 11/23/07

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 29th day of November, 2007

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Merrick Timberwoods, LLC d/b/a Merrick Place Apartments Docket Number: TSCA-04-2008-2513(b), to the addressees listed below.

Kevin Woodruff
Children's Health, Lead &
Asbestos Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Nancy Tommelleo
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

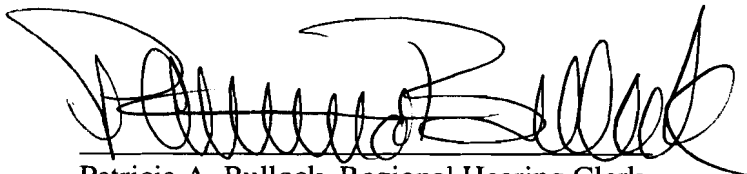
(via EPA's internal mail)

Steven D. Bell & Co.
ATTN: Mark Vernon
221 Roswell Street
Suite 100
Alpharetta, GA 30004

(via Certified Mail, Return Receipt Requested)

Date:

11-29-07



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511