

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 Date

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

Case Docket Number TSCA-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.
224-224A Washington Street Nominee
Realty Trust, Ilya M. Shrayder, Trustee,
and Archgate Townhouses, LLC

Total Dollar Amount of Receivable \$ 12,500 Due Date: _____

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

DEC 15 2011

EPA ORC
Office of Regional Hearing Clerk

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ
Direct: 617-918-1867

BY HAND

December 15, 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*
Consent Agreement and Final Order for Settlement with Remaining Respondents to
Resolve Further Proceedings

Dear Ms. Santiago:

Please find enclosed for filing in the above-entitled case, the original and one copy of a Consent Agreement and Final Order (CAFO) entered between EPA Region 1 and the last two Respondents named in this case, Atlas Property Management, Inc. (Atlas) and 224-224A Washington Street Nominee Real Estate Trust (the Trust). The CAFO includes only Atlas and the Trust because EPA recently resolved its penalty claims against the other named Respondent, Archgate Townhouses, LLC, through a prior CAFO that was effective on November 28, 2011.

Note that the enclosed CAFO concludes the remainder of the above-entitled enforcement case. Accompanying the CAFO also are the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO, the certificate of service, and this cover letter were sent to Respondents and to EPA's Office of Administrative Law Judges.

Thank you for your assistance in this matter.

Sincerely,


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

Enclosures

cc: Carl Lindley, Jr., Esquire
M. Molly Magoon, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
DEC 15 2011

EPA ORC
Office of Regional Hearing Clerk

_____)	
<i>In the Matter of:</i>)	
Atlas Property Management, Inc.,)	CONSENT AGREEMENT
224-224A Washington Street Nominee)	AND FINAL ORDER
Realty Trust, Ilya M. Shnayder, Trustee,)	WITH
and Archgate Townhouses, LLC,)	ATLAS PROPERTY MANAGEMENT, INC.
)	AND
)	224-224A WASHINGTON STREET
)	NOMINEE REALTY TRUST
)	
Respondents.)	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 previously agreed to all of the terms of a separate consent agreement and final order, filed by EPA and effective, on November 28, 2011, to end further proceedings against Archgate in this proceeding; and,

Complainant and Respondents, Atlas Property Management, Inc. ("Atlas") and 224-224A Washington Street Nominee Realty Trust, Ilya M. Shnayder, Trustee ("Trust"), having agreed to all of the terms of this Consent Agreement and Final Order ("CAFO"); and,

Complainant and Respondents, Atlas and the Trust (collectively referred to in this CAFO as the “Parties”), having agreed that settlement of EPA’s civil penalty claims against Respondents Atlas and the Trust 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 Respondents, Atlas and the Trust, as well as the other named Respondent, Archgate.

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, nine of which are or were owned by the Trust and managed by Atlas, 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. Respondents Atlas and the Trust each filed an Answer to the Amended Complaint, on or about June 20, 2011.

4. This CAFO shall apply to and be binding upon Respondents Atlas and the Trust and their successors and assigns, including, but not limited to, subsequent purchasers. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint.

5. Respondents Atlas and the Trust stipulate that, in the Amended Complaint, EPA states a claim upon which relief can be granted. Each Respondent 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. Respondents Atlas and the Trust each 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. Respondents Atlas and the Trust each hereby certifies that it is in compliance with the Disclosure Rule. Each such Respondent also certifies that, to the best of its knowledge and belief, after thorough inquiry, the financial information it submitted to EPA during the pendency of this proceeding fairly, accurately, and materially sets forth its respective financial circumstances.

8. Pursuant to Section 16(a) of TSCA, in light of the nature of the violations, Respondents' 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 twelve thousand five hundred dollars (\$12,500).

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

10. Within 30 days of the effective date of this CAFO, Respondents 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 \$12,500, 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. Environmental Protection Agency
Region 1 (Mail Code OES 04-3)
5 Post Office Square, Suite 100
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, each Respondent 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 a Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for a Respondent's violation of any applicable provision of law.

14. This CAFO shall not relieve Respondents of their obligation to comply with all

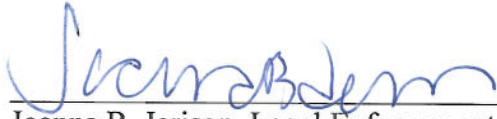
applicable provisions of federal, state or local law. Nor shall this CAFO be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

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 either Respondent. Nothing in this CAFO shall be construed as limiting the authority of the United States to undertake any action against any Respondent 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 settling Party shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and each 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

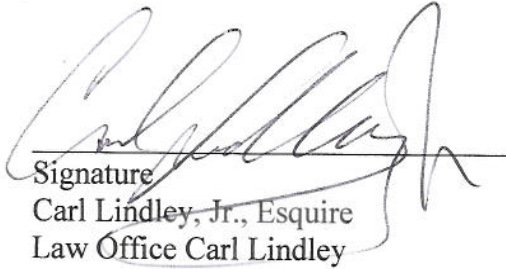
Date: 12/13/11



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

Date: 12-5-11

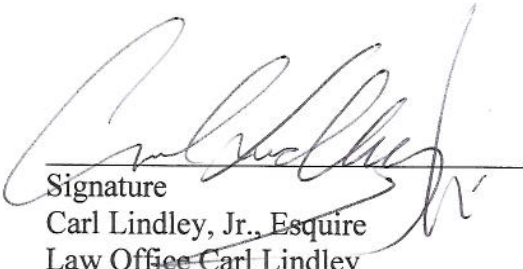
For Respondent, Atlas Property Management, Inc.:



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

Date: 12-2-2011

For Respondent, 224-224A Washington Street Nominee Realty Trust:

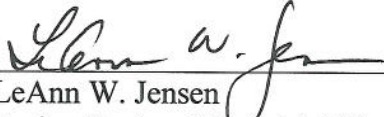


Signature
Carl Lindley, Jr., Esquire
Law Office Carl Lindley
220 Linden Street
Holyoke, MA 01040

Date: 12-2-2011

FINAL ORDER

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



LeAnn W. Jensen
Acting Regional Judicial Officer
U.S. EPA - Region 1

12/14/11

Date

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

CERTIFICATE OF SERVICE

I, Hugh W. Martinez, hereby certify that on this 15th day of December 2011, I caused the foregoing Consent Agreement and Final Order, along with this certificate of service and 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
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

The Honorable Barbara A. Gunning
Administrative Law Judge and ADR Neutral
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

and

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

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



Hugh W. Martinez, Senior Enforcement Counsel
EPA Region 1