

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Peter DeCambre 7/1/13
Name of Case Attorney Date

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

Case Docket Number TSCA-01-2012-0110

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:

Allen Enterprises Rental Properties
Lakeport Plaza, LLC
Open Arms, Outreach, LLC
Alice E. Allen 2002 Trust

Total Dollar Amount of Receivable \$ 2,400 Due Date: 7/31/13

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
REGION I**

RECEIVED
2013 JUL - 1 9:11:22
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

_____)
IN THE MATTER OF:)
)
Allen Enterprises Rental Properties)
Lakeport Plaza, LLC)
Open Arms Outreach, Inc.)
Alice E. Allen 2002 Trust)
)
Respondents.)
)
_____)

Docket Number TSCA-01-2012-01

CONSENT AGREEMENT AND FINAL ORDER

Complainant, United States Environmental Protection Agency - Region 1 ("EPA"),
having filed a civil administrative Complaint on September 27, 2012, against Allen Enterprises
Rental Properties, Lakeport Plaza, LLC, Open Arms Outreach, Inc., and Alice E. Allen 2002
Trust (collectively "Respondents"), in accordance with the Consolidated Rules of Practice at 40
C.F.R. Part 22; and,

Complainant and Respondents (the "Parties") having agreed that settlement of this matter
is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO")
without further litigation is the most appropriate means of settling this matter;

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 this proceeding for the assessment of a civil penalty pursuant to Section

16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.118, by filing the above-mentioned Complaint.

2. EPA alleged in its Complaint that 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 the federal regulations promulgated thereunder, set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). The Complaint alleges that when leasing various apartments in buildings 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, 15 U.S.C. § 2689;

(b) 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, 15 U.S.C. § 2689;

(c) 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, 15 U.S.C. § 2689; and

(d) include as an attachment or within lease contracts, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or the failure to indicate that no such records exist 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

3. This CAFO shall apply to and be binding upon EPA and Respondents and Respondents' successors and assigns, including, but not limited to, subsequent purchasers. Respondents stipulate that the Complainant has jurisdiction over the subject matter alleged in the Complaint and that the Complainant states a claim upon which relief can be granted. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual and legal allegations contained in the Complaint, consent to the terms of this CAFO.

4. Respondents hereby waive their right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and waive their right to appeal the Final Order accompanying this CAFO.

II. TERMS OF SETTLEMENT

5. Respondents hereby certify that they are in compliance with the Disclosure Rule.

6. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), in light of the nature of the violations and other relevant factors, EPA has determined that it is fair and appropriate to settle the violations alleged in the Complaint against Allen Enterprises Rental Properties, Lakeport Plaza, LLC, and Open Arms Outreach, Inc. ("Assessed Respondents") for an assessed civil penalty in the amount of two thousand four hundred dollars (\$2,400). Assessed Respondents also agree to perform a Supplemental Environmental Project ("SEP"). EPA has determined that it is fair and appropriate to settle the violations alleged in the Complaint against Alice E. Allen 2002 Trust ("Allen Trust" or "Non-Assessed Respondent") without an assessed penalty.

7. Without admitting or denying the factual and legal allegations contained herein, Respondents consent to the issuance of this CAFO. Assessed Respondents consent to the

payment of the civil penalty cited in the foregoing paragraph and the performance of a SEP as described in Paragraph 12 below and Appendix A ("SEP Scope of Work").

8. Within thirty (30) days of the effective date of this Agreement, Assessed 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 referenced above in Paragraph 6, to:

United States Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, MO 63197-9000

Assessed Respondents shall provide a copy of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
Five Post Office Square
100 (Mail Code: ORA18-1)
Boston, MA 02109-3912

and

Peter DeCambre
Senior Enforcement Counsel
U.S. EPA, Region I
Five Post Office Square
Suite 100 (Mail Code: OES04-3)
Boston, MA 02109-3912.

The check shall bear the docket number of this action (TSCA-01-2012-0110). Interest and late charges, if applicable, shall be paid as specified in Paragraph 10 herein.

9. The penalty specified in Paragraph 6, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal and state taxes. Assessed Respondents also certify that they have not, and will not, deduct any SEP costs in calculating federal and state income taxes. For federal income tax purposes, Assessed Respondents agree that they will

neither capitalize into inventory or basis nor deduct any costs or expenses incurred in performing the SEP. Additionally, Assessed Respondents certify that they have not, and will not, use SEP costs to obtain state tax credits for lead-abatement work. Assessed Respondents hereby waive any confidentiality rights they have under 26 U.S.C. § 6103 with respect to such SEP costs on their tax returns and on the information supporting their tax returns. This waiver of confidentiality is solely as to EPA and the United States Department of Justice and solely for the purpose of ensuring the accuracy of Assessed Respondents' SEP cost certification.

10. 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.

11. Assessed Respondents shall complete a lead-based paint abatement SEP consisting of performing window, window-trim, door, door jamb and baseboard replacements at Assessed Respondents' property located at 101-103 Church Street, Laconia, New Hampshire. The purpose of the SEP is to mitigate hazards associated with lead-based paint. EPA and Assessed Respondents agree that this SEP is intended to secure significant environmental or public health

protection and improvements.

12. Assessed Respondents shall complete the SEP according to the requirements and schedule set forth in Appendix A, which is incorporated herein by reference and enforceable by this CAFO. The total expenditure for the SEP shall not be less than \$21,600. Assessed Respondents shall complete the SEP within one year from the effective date of this CAFO.

13. Respondent hereby certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation (including any lead abatement order) and also certifies that Respondent has not received, and is not presently negotiating to receive, credit for the SEP in any other enforcement action. Respondent specifically certifies as follows:

It is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. To the best of Respondent's knowledge and belief after reasonable inquiry, there is no such open federal transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

14. Assessed Respondents shall submit a SEP Completion Report and semi-annual progress reports in accordance with the schedule and specifications set forth in Paragraphs 3, 4 and 5 of Appendix A. Assessed Respondents agree that failure to submit such documents in accordance with those requirements shall be deemed a violation of this CAFO, and Assessed

Respondents shall become liable for stipulated penalties as provided in Paragraph 20 below.

15. Notice Requirements: Assessed Respondents shall submit all SEP reports required by this CAFO by first class mail to:

Molly Magoon
U.S. EPA, Region I
Five Post Office Square
Suite 100 (Mail Code: OES05-4)
Boston, MA 02109-3912

and

Peter DeCambre
U.S. EPA, Region I
Five Post Office Square
Suite 100 (Mail Code: OES04-3)
Boston, MA 02109-3912.

16. EPA's right to inspect: Assessed Respondents agree that EPA may inspect the properties at which the SEP projects are being conducted at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

17. Document retention and certification: Assessed Respondents shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CAFO and shall provide the documentation of any such underlying research and data to EPA not more than fourteen (14) days after a request for such information. In all documents or reports submitted to EPA pursuant to this CAFO, Assessed Respondent shall, by their officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that,

based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. EPA's acceptance of SEP Completion Report:

a. After receipt of the SEP Completion Report described in Paragraph 5 of Appendix A, EPA will notify the Assessed Respondents, in writing: (i) identifying any deficiencies in the SEP Completion Report itself and granting Assessed Respondents an additional thirty (30) days to correct any deficiencies; or (ii) indicating that the project has been completed satisfactorily; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with Paragraph 20 below.

b. If EPA elects to exercise option (iii) of Subparagraph 18.a, above (after receipt of an original or resubmitted SEP Completion Report), such that EPA concludes, in its sole discretion, that Assessed Respondents have not implemented part or all of the SEP in accordance with the CAFO, EPA may require Assessed Respondents to:

- i. Pay a stipulated penalty as provided in Paragraph 20;
- ii. Repeat any deficient work, and/or;
- iii. If specific tasks set forth in Appendix A were not performed, perform such work.

EPA shall provide Assessed Respondents with notice of any such requirement, in writing.

19. Any public statement, oral or written, in print, film, or other media, made by Assessed Respondents making reference to the SEP shall include the following language, "This

project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and regulations promulgated thereunder."

20. Stipulated Penalties: Assessed Respondents shall pay to EPA stipulated penalties in the following amounts for each failure to fully and timely comply with the following requirements:

- a. For failure to pay the civil penalty by the date specified in Paragraph 8, Assessed Respondents shall pay \$300 per day until the full penalty is received by EPA;
- b. For failure to submit the SEP Completion Report by the date specified in Paragraph 3 of Appendix A (after giving effect to any extensions of time granted by EPA, if any), Assessed Respondents shall pay \$300 per day from the date the report was due until the date the report is received by EPA;
- c. For failure to submit semi-annual progress reports by the dates specified in Paragraph 3 of Appendix A, Assessed Respondents shall pay a stipulated penalty in the amount of \$200 per day from the date the report was due until the date the report is received by EPA.
- d. For failing to implement the SEP in accordance with Appendix A, Assessed Respondents shall pay \$21,600 plus interest from the effective date of this CAFO.
- e. If EPA determines that Assessed Respondents made good faith efforts to complete the SEP in accordance with Appendix A, but Assessed Respondents incurred SEP costs of less than \$21,600, Assessed Respondent shall pay a stipulated penalty equal to the difference between \$21,600 and the amount of SEP costs actually

incurred, plus interest accrued from the effective date of this CAFO.

- f. The \$21,600 amount set forth in Paragraph 12 above is based on a one year SEP implementation schedule for the window, window-trim, door, door jamb and baseboard replacement work.

21. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity, even if no notice of a violation of this CAFO is sent to Assessed Respondents.

22. Assessed Respondents shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA. Assessed Respondents shall pay interest on any stipulated penalty, or portion thereof, that is not paid within fifteen (15) days of EPA's written demand. Payment of stipulated penalties and interest, if any, shall be made by certified or cashier's check payable to "Treasurer, United States of America" in accordance with the procedures specified in Paragraphs 8 and 10 herein.

23. Payment of stipulated penalties shall be in addition to any other relief available under federal law.

24. 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 Respondents' violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondents' violation of any applicable provision of law.

25. 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, or to

constitute EPA approval of the equipment, materials, or technology used by Assessed Respondents in connection with the SEP.

26. This CAFO constitutes a settlement by EPA of the claims for civil penalties set forth in the EPA 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. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this CAFO shall not be a defense to any actions unrelated to the violations alleged in the EPA Complaint and subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations. Nothing in this Consent Agreement shall be construed as limiting the authority of the United States to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment.

27. 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.

30. Each Party shall bear its own costs, disbursements and attorneys fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other Party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

For EPA:



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

Date: 6/27/13

For Assessed Respondents:

Richard E. Allen
Allen Enterprises Rental Properties,
Lakeport Plaza, LLC,
and Open Arms Outreach, Inc.

Date: 6/19/13

For Non-Assessed Respondents:

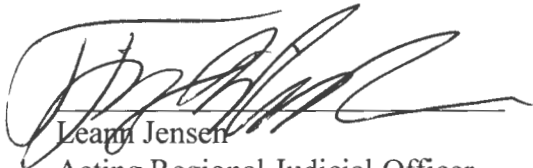
Alice E. Allen
Alice E. Allen 2002 Trust

Date: 6-19-13

In the Matter of Allen Enterprises et. al.
Docket Number TSCA-01-2012-0110

ORDER

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



Learn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region I

6/28/13
Date

TLW Acting dr LAT

Appendix A

Supplemental Environmental Project Scope of Work

In the Matter of Allen Enterprises et. al.
Docket Number TSCA-01-2012-0110

1. **Description of Project:** Pursuant to this project, Allen Enterprises Rental Properties, Lakeport Plaza, LLC, and Open Arms Outreach, Inc. (“Assessed Respondents”) shall, within one year of the Effective Date of the CAFO, spend \$21,600 replacing old windows, window trim, doors, door jambs and baseboards at Assessed Respondents’ property located at 101-103 Church Street, Laconia, New Hampshire. These components are presumed to contain lead paint.

Assessed Respondents shall ensure the replacement of windows, window-trims, doors, door jambs and baseboards in the following manner:

- Remove and dispose of existing windows, parting beads, ropes, weights and stops.
- Remove and dispose of existing storm windows.
- Insulate weight pockets.
- Seal and paint exterior window sill.
- Install replacement window units in the existing finish openings. Bed in sealant and seal both inside and outside perimeter to provide a weather-tight installation. Use non-expanding foam to fill the spaces between the window unit and the opening.
- Install and paint new window stops.
- Prepare and encapsulate all interior window trim including casings, stool caps, aprons, etc.

2. **Standard of Care:**

a. The SEP shall be performed in accordance with EPA’s regulations on Residential Property Renovation set forth at 40 C.F.R. Part 745, Subpart E, and the United States Department of Housing and Urban Development Guidelines for Evaluation and Control and Lead-Based Paint Hazards in Housing (June 1995, as revised in 1997).

b. The SEP shall be performed in compliance with all applicable requirements at 40 C.F.R. Part 745, Subpart E, including, but not limited to, all information distribution requirements under 40 C.F.R. § 745.84, work practice standards under 40 C.F.R. § 745.85, record and reporting requirements under 40 C.F.R. § 745.86.

3. **Schedule:** Respondent shall complete the SEP on the following schedule:

a. Within six months from the Effective Date of the Consent Agreement and Final Order (“CAFO”), Assessed Respondents shall submit to EPA its first semi-annual progress report, which shall contain the information specified in Paragraph 4 below.

b. Within one year after the Effective Date of the CAFO, Assessed Respondents shall complete the SEP.

c. Within 30 days of completing the SEP, Assessed Respondent shall submit a SEP Completion Report, containing the information specified in Paragraph 5 below.

4. **SEP Semi-Annual Progress Report:** The SEP Semi-Annual Progress Report required by Paragraph 3(a) above shall contain the following information:

a. A summary of the window replacement completed during that six month period;

b. A summary of the SEP costs incurred during the six month reporting period, with costs itemized (documentation of these costs shall be provided at the end of the project, when Assessed Respondent submits the SEP Completion Report);

c. Copies of all inspection and clearance sampling reports issued during the six month reporting period, providing inspection and clearance sampling locations, inspection and clearance sampling results and documentation of analytical quality assurance/quality control; and

d. The certification language provided in Paragraph 17 of the CAFO.

5. **SEP Completion Report:** The SEP Completion Report required by Paragraph 3(c) above shall contain the following information:

a. Description of the window replacement completed, including representative photographs showing before and after photographs of all SEP work done;

b. Any inspection or clearance sampling reports and data and/or cleaning verification information not already submitted in the semi-annual progress reports;

c. Itemized costs of goods and services used to complete the window replacement, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

d. Itemized costs of services used to complete any lead inspections or clearance sampling, documented by copies of invoices or canceled checks that specifically identify and itemize the costs of the services.

e. Documentation that the renovator and firm who performed the SEP and clearance sampling are authorized to perform such work in accordance with EPA’s Renovation, Repair and Painting Rule (“RRP”), including copies of appropriate renovator and firm certifications;

- f. Completed EPA “Sample Renovation Recordkeeping Checklist” or a similar form;
- g. Copy of the written acknowledgement that the owner or occupant has received EPA’s *Renovate Right Pamphlet* prior to the renovation;
- h. Certification that Assessed Respondents have completed the SEP in compliance with this CAFO;
- i. A statement that Assessed Respondents have not and will not seek rebates for the window purchases pursuant to any federal, state or local agency’s or utility’s energy-efficiency program;
- j. A description of any operating problems encountered and the solutions thereto; and
- k. The certification language provided in Paragraph 17 of the CAFO.

In itemizing costs in the SEP Completion Report, Assessed Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes, without limitation, invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment was made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

6. The completion of the SEP projects discussed in this Scope of Work shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law.