

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Peter DeCambre
Name of Case Attorney

3/18/11
Date

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

Case Docket Number TSCA-01-2010-0046

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:

122 Chestnut, L.L.C.
c/o Michael S. Schneider
Doherty, Wallace, Pillsbury & Murphy, P.C.
One Monarch Place, Suite 1900, Springfield, MA 01144-1900

Total Dollar Amount of Receivable \$ 6,000 Due Date: 3/15/12

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 1,500 on 4/15/11

2nd \$ 1,541 on 8/5/11

3rd \$ 1,528 on 11/25/11

4th \$ 1,514 on 3/15/12

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

MAR 17 2010

EPA ORC WS
Office of Regional Hearing Clerk

IN THE MATTER OF:)
)

122 Chestnut, L.L.C.)
)

Respondent.)
)
)
)

Docket Number TSCA-01-2010-0046

CONSENT AGREEMENT AND FINAL ORDER

Complainant, United States Environmental Protection Agency - Region 1 ("EPA"), having filed a civil administrative Complaint on August 23, 2010, against Respondent, 122 Chestnut, L.L.C. ("Respondent"), in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22; and,

Complainant and Respondent (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 Respondent 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"), Respondent 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, 5 U.S.C. § 2689; and

d. include, as an attachment or within leases or rental agreements, 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 an indication that no such records exist, in violation of 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 Respondent. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that EPA states a claim upon which relief can be granted. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual and legal allegations

contained in the Complaint, consents to the terms of this CAFO as a settlement of the allegations raised by EPA in the Complaint.

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

II. TERMS OF SETTLEMENT

5. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), in light of the nature of the violations, Respondent's ability to pay, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of six thousand dollars (\$6,000).

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

7. Respondent shall pay the penalty of \$6,000, plus interest at three (3) percent per annum, in four payments as follows:

a. The first payment of \$1,500 shall be made within thirty (30) days of the date the Final Order is filed with the Regional Hearing Clerk;

b. The second payment of \$1,541 (of which \$1,500 is principal and \$41 is interest) shall be made within one hundred forty two (142) days of the date the Final Order is filed with the Regional Hearing Clerk;

c. The third payment of \$1,528 (of which \$1,500 is principal and \$28 is interest) shall be made within two hundred fifty four (254) days of the date the Final Order is filed with the Regional Hearing Clerk; and,

d. The fourth payment of \$1,514 (of which \$1,500 is principal and \$14 is interest) shall

be made within three hundred sixty five (365) days of the date the Final Order is filed with the Regional Hearing Clerk.

e. Any failure to pay a scheduled penalty payment on time, unless excused in writing in advance by the Complainant, shall accelerate the entire penalty schedule and make all remaining portions of the \$6,000 penalty due immediately, together with all amounts of interest then owed. In addition, non-payment of penalties may result in the accrual of non-payment penalties in accordance with Paragraphs 10 and 11 below.

8. Respondent shall make payments 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 7, to:

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

Respondent shall provide a copy of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA Region I
5 Post Office Square
Suite 100
Mailcode: ORA 18-1
Boston, MA 02109-3912

and

Peter DeCambre
Senior Enforcement Counsel
U.S. EPA Region I
5 Post Office Square
Suite 100
Mailcode: OES 04-1
Boston, MA 02109-3912.

The check shall bear the docket number of this action (TSCA-01-2010-0046). Interest and late

charges, if applicable, shall be paid as specified in Paragraph 10 herein.

9. The penalty specified in Paragraph 5, above, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purpose of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 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.

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 attorney's fees. In addition, a non-payment penalty charge of seven (7) 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. Stipulated Penalties: Respondent shall pay to EPA stipulated penalties in the following amounts for each failure to fully and timely comply with the following requirement:

a. For failure to pay the civil penalty by the dates specified in Paragraph 7, Respondent shall pay \$200 per day until the full penalty is received by EPA.

12. Stipulated penalties shall begin to accrue on the day after payment 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 Respondent.

13. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA. Respondent 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 cashier's or certified check payable to "Treasurer, United States of America" in accordance with the procedures specified in Paragraph 8 herein.

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

15. 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.


16. 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 Respondent. 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 Respondent to comply with such laws and regulations. Nothing in this CAFO shall be construed as limiting the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the

such laws and regulations. Nothing in this CAFO shall be construed as limiting the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment.

17. 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.

18. Each party shall bear its own costs in this proceeding, including attorney fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

For EPA:




Joanna Jerison
Enforcement Manager
Office of Environmental Stewardship
U.S. EPA Region 1

3/14/11

Date

For 122 Chestnut, L.L.C.




Date: March 4, 2011

In the Matter of 122 Chestnut, L.L.C.
Docket No. TSCA-01-2010-0046

ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent 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 Metcalf
Acting Regional Judicial Officer
U.S. EPA Region I



Date

EPA DOCKET NO. TSCA-01-2010-0046
In Re: 122 Chestnut, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that the Consent Agreement and Final Order for above referenced matter has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Wanda Rivera
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, Massachusetts 02109 - 3912

Copy by First Class Mail

122 Chestnut, L.L.C.
c/o Michael S. Schneider
Doherty, Wallace, Pillsbury & Murphy, P.C.
One Monarch Place, Suite 1900
Springfield, MA 01144-1900

Dated: 3/16/11



Peter DeCambre
Peter DeCambre
Senior Enforcement Counsel
U.S. Environmental Protection Agency,
Region 1
5 Post Office Square, Suite 100 (OES 4-1)
Boston, Massachusetts 02109 - 3912
Tel (617) 918-1890
Electronic Fax (617) 918-0890