



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVE
EDISON, NEW JERSEY 08837

MAR 25 2011

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Article Number: 7001 0320 0004 7789 8024

Mr. Charles Kaplan, Owner
Wedgewood Apartments, LLC
150 Genesee Street
New Hartford, New York 13413

Re: In the Matter of **Wedgewood Apartments, LLC**
Docket No. TSCA-02-2010-9268

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 MAR 28 A 10:45
REGIONAL HEARING
CLERK

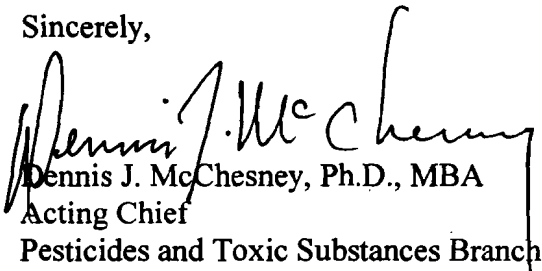
Dear Mr. Kaplan:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency, Region 2 (EPA).

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact James Crossmon of my staff at (732) 452-6409, if you have any questions regarding this matter.

Sincerely,


Dennis J. McChesney, Ph.D., MBA
Acting Chief
Pesticides and Toxic Substances Branch

cc: Andrew S. Kowalczyk, Jr., Esq.

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 MAR 28 A 10:45
REGIONAL HEARING
CLERK

----- X
In the Matter of :
 :
Wedgewood Apartments, LLC :
 :
 :
 Respondent. :
 :
 Proceeding under Section 16(a) of :
 the Toxic Substances Control Act. :
----- X

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No.
TSCA-02-2010-9268

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). On September 3, 2010, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Respondent, Wedgewood Apartments, LLC ("Respondent"), with a primary place of business located at 150 Genesee Street, New Hartford, New York 13413. The Complaint alleged that Respondent, as owner and lessor, failed to comply with 40 C.F.R. Sections 745.113(b)(1), 745.113(b)(2), 745.113(b)(3), 745.113(b)(4) and 745.113(b)(6) during the years 2007 through and including 2009, by leasing target housing without providing: the "Lead Warning Statement" which is set forth in the regulation; a statement disclosing any knowledge of lead-based paint; a list of any existing records or reports pertaining to lead-based paint; verification of the receipt of

information by the lessees; and signatures and the dates of signature of the lessors, agents, or lessees certifying to the accuracy of their statements. These failures or refusals to comply with the regulations cited above constitute failures or refusals to comply with 40 C.F.R. § 745.113(b), which are violations of 42 U.S.C. Section 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (CAFO), pursuant to 40 C.F.R. Section 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

FACTUAL ALLEGATIONS

1. EPA alleges that Respondent, acting as owner and lessor, leased target housing to numerous tenants between 2007 and 2009, as set forth in the Complaint described above.

2. The subject Complaint alleges Respondent leased target housing without providing a statement disclosing any knowledge of the presence or absence of lead-based paint, a list of any existing records or reports pertaining to lead-based paint, and/or without obtaining verification of the lessees' receipt of the required information, and/or certification statements by the lessor, agent or lessee.

3. Based on these alleged failures, EPA contends Respondent committed violations of 40 C.F.R. Section 745.113(b), including alleged violations of 42 U.S.C. Section 4852d(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

In lieu of costly and protracted litigation, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed, and accepted by Respondent that it shall hereafter the effective date of the Final Order incorporating this Consent Agreement comply with the following terms:

1. Respondent shall comply with the applicable requirements of TSCA, and its implementing regulations set forth at 40 C.F.R. Part 745, Subpart F, with respect to all target housing it leases, sells, or for which it acts as an agent in a lease or sale.

2. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies the specific factual allegations in the Complaint; and (c) neither admits nor denies the Factual Allegations in this Consent Agreement.

3. Respondent shall pay a civil penalty to EPA in the total amount of Nine Hundred Sixty-Nine Dollars (\$969), in the amount and with the due date as detailed below. Payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon: ***IN THE MATTER OF WEDGEWOOD APARTMENTS, LLC***, and shall bear thereon the Docket Number ***TSCA-02-2010-9268***. If Respondent chooses to make payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read " D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Wedgewood Apartments, LLC**
- 7) Case Number: **TSCA-02-2010-9268**.

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to:

Theresa Bourbon, Lead Team
Pesticides and Toxic Substance Branch, MS-225
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue
Edison, NJ 08837

and

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

The payment of Nine Hundred Sixty-Nine Dollars (\$969) must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CAFO. This date shall hereafter be referred to as “due date”. Payment which is untimely, or not made, is subject to the following penalties:

- a. Failure to pay the penalty in full, according to the above provisions, will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Furthermore, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.

d. The effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

4. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of any equipment, technology or structure installed or constructed by Respondent under the terms of this Agreement.

5. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's certifications in this proceeding) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on the Factual Allegations therein, or on the accompanying Final Order.

8. Full payment of the penalty in a settlement pursuant to 40 C.F.R. § 22.18(b) shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Each party hereto agrees to bear its own costs and fees in this matter.

13. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Wedgewood Apartments, LLC
Docket No. TSCA-02-2010-9268

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy interoffice mail to:

Office of the Regional Hearing Clerk.
U.S. EPA, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Certified Mail Return Receipt Requested:

Mr. Andrew S. Kowalczyk, Jr., Esq.
Kowalczyk, Deery, Hilton & Broadbent, LLP
185 Genesee Street, 12th Floor
Utica, NY 13501

Dated: 3/25/11
Edison, New Jersey

James Crossman