

CERTIFICATE OF SERVICE

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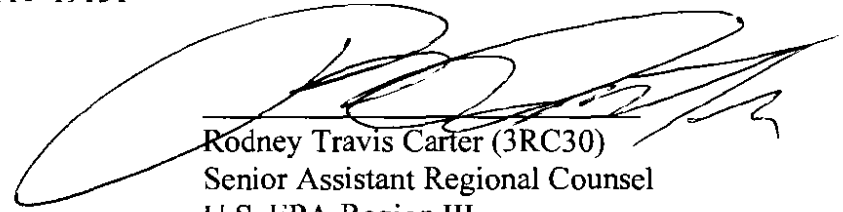
Docket Numbers TSCA-3-2009-0014

I certify that on the date noted below, the Consent Agreement and Final Order was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that I caused true and correct copies of the Consent Agreement and Final Order to be sent by express mail to the persons listed below:

Jonathan H. Spergel, Esquire
Matthew Sullivan, Esquire
Manko Gold Katcher Fox LLP.
401 City Ave., Suite 500
Bala Cynwyn, PA 19004

Mr. Michael Woodward
Woodward Properties, Inc.
4920 City Avenue, Suite 200
Philadelphia, PA 19131

Date: June 29, 2009



Rodney Travis Carter (3RC30)
Senior Assistant Regional Counsel
U.S. EPA-Region III
1605 Arch Street
Philadelphia, PA 19103

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

2009-03-11 2:06

IN THE MATTER OF:)
)
Woodward Properties Inc.)
4920 City Avenue, Suite 200)
Philadelphia, PA 19131)
)
Respondent)
)
Pelham Court Apartments)
6803-09 Emlen Street)
Philadelphia, PA 19119)
)
Fairview Arms Apartments)
5219 Wynnefield Avenue)
Philadelphia, PA 19131)
)
Bala Apartments)
2491 N. 50th Street)
Philadelphia, PA 19131)

Docket No. TSCA-3-2009-0014

CONSENT AGREEMENT

**UNDER SECTION 16 (a) OF
THE TOXIC SUBSTANCES
CONTROL ACT**

Target Housing

CONSENT AGREEMENT

The Director, Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), **United States Environmental Protection Agency**, Region III (“EPA” or “Complainant”) and **Woodward Properties Inc.** (“Respondent”), the Parties hereto, agree to the entry of this Consent Agreement and the attached Final Order (referred to collectively as the “CA/FO”).

I. PRELIMINARY STATEMENT

1 The violations cited herein pertain to the Respondent’s alleged failure to comply with requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F, which statutory and regulatory provisions are

enforceable pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

- 2 In accordance with 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, this CA/FO simultaneously commences and resolves EPA's claims for civil penalties for the specific violations alleged in this Consent Agreement.

II. JURISDICTION

- 3 The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the RLBPHRA, 42 U.S.C. § 4852d, 40 C.F.R. Part 745, Subpart F, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.
- 4 For the purposes of this proceeding only, Respondent admits the jurisdictional allegations of this CA/FO.

III. TERMS OF THE SETTLEMENT

- 5 Except as provided in paragraph 4, above, Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth herein.
- 6 This CA/FO resolves only EPA's claims for civil penalties for the specific violations alleged herein. This CA/FO is binding upon, and shall inure to the benefit of, Complainant and Respondent. Nothing herein shall be construed to create any private rights of action in any third party, including any individual residing in any property described herein.
- 7 Nothing in this CA/FO shall be construed to limit the authority of the Complainant to take action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, welfare or the environment. In addition, this agreement is subject to all limitations on the scope of resolution and the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*.

- 8 For the purposes of this proceeding only, Respondent hereby expressly waives its right to
contest the allegations in this Consent Agreement, or to appeal the Final Order.
- 9 Respondent certifies that, with respect to the violations alleged in the Findings of Facts
and Conclusions of Law, it is currently in full compliance with Section 1018 of
RLBPHRA and EPA's regulations thereunder at 40 C.F.R. Part 745, Subpart F.
- 10 Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
Respondent agrees not to contest Complainant's jurisdiction with respect to the execution
of this Consent Agreement, the issuance of the attached Final Order, or the enforcement
thereof.
- 11 Complainant reserves any rights and remedies available to it to enforce the provisions of
this CA/FO under TSCA and regulations promulgated thereunder, and any other federal
laws or regulations for which Complainant has jurisdiction, following the entry of this
CA/FO.
- 12 No portion of any civil penalty or interest paid by Respondent pursuant to this CA/FO
shall be claimed by Respondent as a deduction for federal, state, or local income tax
purposes.
- 13 Nothing in this CA/FO shall alter or otherwise affect Respondent's obligation to comply
with all applicable federal, state, and local statutes and regulations.
- 14 Each party shall bear its own costs and attorneys fees in connection with this proceeding.

IV. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 15 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated
Rules of Practice, EPA alleges and adopts the Findings of Fact and Conclusions of Law
set forth immediately below.
- 16 Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section
401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term "Target Housing"
means "any housing constructed prior to 1978, except housing for the elderly or persons
with disabilities (unless any child who is less than 6 years of age resides or is expected to
reside in such housing) or any 0-bedroom dwelling."

- 17 Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either a single family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
- 18 Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. § 4851b(24), and TSCA Section 401(15), 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.
- 19 At all times relevant to the violations alleged herein, Respondent was the “agent” of the “owners” and “lessors” of certain properties located in Philadelphia, Pennsylvania as follows: *Pelham Court Apartments*, located at *6803-09 Emlen Street*; *Fairview Arms Apartments* located at *5219 Wynnefield Avenue*; and *Bala Apartments* located at *2491 N. 50th Street*, collectively referred to hereinafter as “the Properties.” The Properties, at all times relevant to the violations alleged herein, consisted of real property on which there was situated a residential dwelling in the form of a structure containing more than one separate residential dwelling unit, and in which each such unit was used or occupied, or was intended to be used or occupied, in whole or in part, as the residence of one or more persons.
- 20 On March 16, 2006, Complainant issued a “Request for Information” letter to Respondent. In the letter Complainant requested, *inter alia*, copies of all “lease and sale documents” relating to transactions involving each residential dwelling unit at the Properties dating back as far 2002.
- 21 Respondent represented to EPA that it was having difficulty answering the “Request for Information” letter because of the volume of documentation required to respond. EPA ultimately agreed to accept, and Respondents provided, for the purpose of responding to that specific request for information letter, documentation relating to a representative

- sampling of the requested information.
- 22 On December 11, 2007 Complainant issued a letter to Respondent entitled “**REQUEST TO SHOW CAUSE Non - Compliance with the Real Estate Notification and Disclosure Rule for Lead-Based Paint**” alleging noncompliance with the “Disclosure Rule” and offering Respondent the opportunity to “show cause” why EPA should not commence an administrative enforcement action against Respondent and seek civil monetary penalties for the Disclosure Rule violations. In letters dated April 4, 2008, April 9, 2008, and May 9, 2008, Respondents provided EPA with the information sought in the “Request to Show Cause” letter and provided information regarding a subsequent request emailed to Respondent’s counsel by Complainant’s counsel on May 1, 2008.
- 23 The residential dwellings located at the Properties consist of housing constructed prior to 1978.
- 24 The residential dwellings located at the Properties consist of housing that is not, and at the time of the violations alleged herein was not, housing used for the elderly or persons with disabilities or a 0-bedroom dwelling as defined by 40 C.F.R. § 745.103.
- 25 The residential dwellings located at the Properties are “Target Housing” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4581b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.
- 26 Pursuant to 40 C.F.R. § 745.103, the term “owner” means “any entity that has legal title to Target Housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.”
- 27 Pursuant to 40 C.F.R. § 745.103, the term “lessor” means “any entity that offers Target Housing for lease, rent or sublease, including, but not limited to, individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and nonprofit organizations.”
- 28 Pursuant to 40 C.F.R. § 745.103, the term “agent” means “any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a

representative of the seller or lessor, for the purpose of selling or leasing Target Housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser."

29 Pursuant to 40 C.F.R. § 745.103, the term "lessee" means "any entity that enters into an agreement to lease, rent, or sublease Target Housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and non-profit organizations."

30 Pursuant to 40 C.F.R. § 745.103, the term "lead-based paint" means "paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm²] or 0.5 percent by weight."

31 Pursuant to 40 C.F.R. § 745.103, the term "lead-based paint hazard" means "any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency."

32 40 C.F.R. § 745.107 sets forth the disclosure requirements for sellers and lessors of Target Housing and provides, in pertinent part, that:

(a) The following activities shall be completed before the . . . lessee is obligated under any contract to purchase or lease Target Housing that is not otherwise an exempt transaction pursuant to [40 C.F.R.] § 745.101. Nothing in this section implies a positive obligation on the . . . lessor to conduct any evaluation or reduction activities.

* * *

(2) The . . . lessor shall disclose to the . . . lessee the presence of any known lead-based paint and/or lead-based paint hazards in the Target Housing being sold or leased. The . . . lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint

hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

* * *

(4) The . . . lessor shall provide the purchaser or lessee with any records or reports available to the . . . lessor pertaining to lead-based paint and/or lead-based paint hazards in the Target Housing being sold or leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily Target Housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the Target Housing as a whole.

33 40 C.F.R. § 745.113 sets forth certification and acknowledgment of disclosure requirements applicable to lessors and provides, in pertinent part, as follows:

(b) *Lessor requirements.* Each contract to lease Target Housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

* * *

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

* * *

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this [40 C.F.R.] section [745.113] and the lead hazard information pamphlet required under 15 U.S.C. [§ 2686].

* * *

(6) The signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature

34 Agent responsibilities are set forth at 40 C.F.R. § 745.115 and require, in pertinent part, that:

(a) Each agent shall ensure compliance with all requirements of this subpart.

To ensure compliance, the agent shall:

(1) Inform the . . . lessor of his/her obligations under [40 C.F.R.] §§ 745.107, 745.110, and 745.113.

(2) Ensure that the . . . lessor has performed all activities required under [40 C.F.R.] §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of [40 C.F.R.] §§ 745.107, 745.110, and 745.113.

35 40 C.F.R. § 745.118(e) provides that a failure or refusal to comply with [40 C.F.R.] § 745.107 (disclosure requirements for sellers and lessors), [40 C.F.R.] § 745.110 (opportunity to conduct an evaluation), [40 C.F.R.] § 745.113 (certification and acknowledgment of disclosure) or [40 C.F.R.] § 745.115 (agent responsibilities) is a violation of [RLBPHRA Section 1018(b)(5),] 42 U.S.C. § 4852d(b)(5) and of TSCA Section 409 (15 U.S.C. § 2689).

36 40 C.F.R. § 745.118(f) provides, in pertinent part, that violators may be subject to civil and criminal sanctions pursuant to TSCA Section 16 (15 U.S.C. § 2615) for each violation and the penalty for each violation applicable under 15 U.S.C. § 2615 shall not be more than \$11,000 for all violations occurring after July 28, 1997.

37 The Target Housing listed in the chart below was leased by Respondent, as agent for the lessor of each such Target Housing unit, to a lessee on the dates indicated:

Transaction #	Real Property	Date entered	Unit.	40 C.F.R. Part 745 Underlying Violation
1	<i>Pelham Court Apartments</i>	07/06/04	02J	113(b)(2), 113(b)(4)
2	<i>Pelham Court Apartments</i>	08/12/05	01D	113(b)(2), 113(b)(4)
3	<i>Pelham Court Apartments</i>	12/01/05	01G	113(b)(2), 113(b)(4)
4	<i>Pelham Court Apartments</i>	08/15/05	01L	113(b)(2), 113(b)(4)

5	<i>Pelham Court Apartments</i>	07/30/04	02D	113(b)(2), 113(b)(4)
6	<i>Pelham Court Apartments</i>	11/15/05	02F	113(b)(2), 113(b)(4)
7	<i>Pelham Court Apartments</i>	07/15/05	02K	113(b)(2), 113(b)(4)
8	<i>Pelham Court Apartments</i>	03/28/06	03B	113(b)(2), 113(b)(4)
9	<i>Pelham Court Apartments</i>	05/09/05	102	113(b)(2), 113(b)(4)
10	<i>Pelham Court Apartments</i>	04/01/05	104	113(b)(2), 113(b)(4)
11	<i>Pelham Court Apartments</i>	05/01/06	104	113(b)(2), 113(b)(4)
12	<i>Pelham Court Apartments</i>	11/04/05	208	113(b)(2), 113(b)(4)
13	<i>Pelham Court Apartments</i>	07/01/05	307	107(a)(2), 107(a)(4), 113(b)(2), 113(b)(4)
14	<i>Pelham Court Apartments</i>	09/01/05	312	113(b)(2), 113(b)(4)
15	<i>Pelham Court Apartments</i>	03/01/05	403	113(b)(2), 113(b)(4)

Transaction # Real Property Date entered Unit. 40 C.F.R. Part 745 Underlying Violation

1	<i>Fairview Arms Apartments</i>	05/01/06	0G-1	113(b)(2), 113(b)(4)
2	<i>Fairview Arms Apartments</i>	07/01/04	103	113(b)(2), 113(b)(4)
3	<i>Fairview Arms Apartments</i>	02/27/06	109	113(b)(2), 113(b)(4)
4	<i>Fairview Arms Apartments</i>	04/25/05	203	107(a)(2), 107(a)(4), 113(b)(2), 113(b)(4)
5	<i>Fairview Arms Apartments</i>	07/01/05	303	113(b)(2), 113(b)(4)
6	<i>Fairview Arms Apartments</i>	8/26/05	406	113(b)(2), 113(b)(4) 113(b)(6)

Transaction # Real Property Date entered Unit. 40 C.F.R. Part 745 Underlying Violation)

1	<i>Bala Apartments</i>	03/31/06	233C	113(b)(2), 113(b)(4)
2	<i>Bala Apartments</i>	01/26/06	331C	113(b)(2), 113(b)(4)
3	<i>Bala Apartments</i>	11/01/05	333C	113(b)(2), 113(b)(4)
4	<i>Bala Apartments</i>	12/22/05	431C	113(b)(2), 113(b)(4)
5	<i>Bala Apartments</i>	02/01/05	241D	113(b)(2), 113(b)(4)
6	<i>Bala Apartments</i>	04/01/05	342D	107(a)(2), 107(a)(4), 113(b)(2), 113(b)(4)
7	<i>Bala Apartments</i>	09/02/05	441D	113(b)(2), 113(b)(4)
8	<i>Bala Apartments</i>	10/01/04	101A	113(b)(2), 113(b)(4)
9	<i>Bala Apartments</i>	07/30/04	305A	113(b)(2), 113(b)(4)
10	<i>Bala Apartments</i>	06/30/04	312A	113(b)(2), 113(b)(4)
11	<i>Bala Apartments</i>	06/30/04	412A	113(b)(2), 113(b)(4)

COUNTS 1 - 32**Failure to Inform Lessors of Obligations Under with 40 C.F.R. § 745.115(a)(1)**

- 38 The allegations contained in Paragraphs 1 through 37, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
- 39 Respondent did not inform the lessors of the Target Housing, described in paragraph 37 above, of their obligations under 40 C.F.R. §§ 745.107, 745.110, and 745.113 before the lessees of such Target Housing were obligated to lease such Target Housing pursuant to the Lease Transactions described in paragraph 37, above.
- 40 Respondent's acts and/or omissions described in paragraph 39, above, constitute 32 separate violations of 40 C.F.R. § 745.115(a)(1), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5)

COUNTS 33-35**Failure to Ensure Compliance with 40 C.F.R. § 745.107(a)(2)**

- 41 The allegations contained in Paragraphs 1 through 40, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
- 42 At no time before any lessee of the Target Housing unit which is the subject of Lease Transaction #13 for the Pelham Apartments, Transaction #4 for the Fairview Arms Apartments and Transaction #6 of the Bala Apartments, became obligated to lease such Target Housing did the lessor of such Target Housing unit disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the Target Housing being leased or disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces, as required by 40 C.F.R. § 745.107(a)(2).
- 43 Respondent failed to ensure that the lessor or each Target Housing unit that was subject to the Lease Transactions referred to in paragraph 42, above, performed all activities required under § 745.107(a)(2) with respect to such Lease Transaction, and failed to personally

ensure compliance with the requirements of § 745.107(a)(2) with respect to such Lease Transaction.

44 Respondent's acts and/or omissions described in paragraph 43 above, constitute 3 separate violations of 40 C.F.R. § 745.115(a), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

COUNTS 36 - 38

Failure to Ensure Compliance with 40 C.F.R. § 745.107(a)(4)

45 The allegations contained in Paragraphs 1 through 44, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

46 At no time before any lessee of any Target Housing unit which is the subject of Lease Transaction #13 for the Pelham Apartments, Transaction #4 for the Fairview Arms Apartments and Transaction #6 of the Bala Apartments, became obligated to lease such Target Housing, did any lessor of such Target Housing provide any such lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the Target Housing being leased, as required by 40 C.F.R. §745.107(a)(4).

47 Respondent failed to ensure that the lessor of each Target Housing unit that was subject to the Lease Transactions referred to in paragraph 46, above, performed all of the activities required under 40 C.F.R. § 745.107(a)(4) with respect to such Lease Transaction and failed to personally ensure compliance with such requirement.

48 Respondent's acts and/or omissions described in paragraph 47 above, constitutes 3 separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

COUNTS 39 - 70

Failure to Ensure Compliance with 40 C.F.R. § 745.113(b)(2)

49 The allegations contained in Paragraphs 1 through 48, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

- 50 None of the leases of the Target Housing that was the subject of a lease transaction described in paragraph 37, above, contained, in the contract to lease itself or as an attachment thereto, a statement by the lessor describing the presence of known lead-based paint and/or lead-based paint hazards in the respective Target Housing or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the respective Target Housing, as required by 40 C.F.R. § 745.113(b)(2).
- 51 Respondent failed to ensure that the lessor of each Target Housing unit that was subject to the Lease Transactions referred to in paragraph 37, above, performed all of the activities required under 40 C.F.R. § 745.113(b)(2) with respect to such Lease Transaction and failed to personally ensure compliance with such requirements of 40 C.F.R. §745.113(b)(2) with respect to such Lease Transactions.
- 52 Respondent's acts and/or omissions described in paragraph 51 above, constitutes 32 separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

COUNTS 71 - 102

Failure to Ensure Compliance with 40 C.F.R. § 745.113(b)(4)

- 53 The allegations contained in Paragraphs 1 through 52, above, of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
- 54 None of the leases of the Target Housing that was the subject of a Lease Transaction described in paragraph 37, above, contained, in the contract to lease itself or as an attachment thereto, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. [§ 2686], as required by 40 C.F.R. § 745.113(b)(4).
- 55 Respondent failed to ensure that the lessor of each Target Housing unit that was subject to the Lease Transactions referred to in paragraph 37, above, performed all of the activities required under 40 C.F.R. § 745.113(b)(4) with respect to such Lease Transaction and failed to personally ensure compliance with such requirements of 40 C.F.R. §745.113(b)(4) with respect to such Lease Transactions.

56 Respondent's acts and/or omissions described in paragraph 55 above, constitute 32
separate violations of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689,
and RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

COUNT 103

Failure to Ensure Compliance with 40 C.F.R. § 745.113(b)(6)

57 The allegations contained in Paragraphs 1 through 56, above, of this Consent Agreement
are incorporated by reference herein as though fully set forth at length.

58 The lease for the Target Housing that was the subject of the Lease Transaction described
in paragraph 37, above, as Lease Transaction #6, Fairview Arms Apartments, did not
contain, in the contract to lease itself or as an attachment thereto, the signatures of the
lessors, agents and/or lessee(s), certifying to the accuracy of their statements, to the best of
their knowledge, along with the dates of signature, as required by 40 C.F.R.
§ 745.113(b)(6).

59 Respondent failed to ensure that the lessor of the Target Housing unit that was subject to
the Lease Transaction referred to in paragraph 58, above, performed all of the activities
required under 40 C.F.R. § 745.113(b)(6) with respect to such Lease Transaction and
failed to personally ensure compliance with such requirements of 40 C.F.R.
§745.113(b)(6) with respect to such Lease Transaction.

60 Respondent's acts and/or omissions described in paragraph 59 above, constitutes one
violation of 40 C.F.R. § 745.115(a)(2), TSCA Section 409, 15 U.S.C. § 2689, and
RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5).

V. CIVIL PENALTY

61 Respondent agrees to pay a civil penalty in the amount of Forty Eight Thousand, Nine
Hundred and Thirty Five dollars (\$48,935.00) as described in this CA/FO in full and final
settlement of EPA's claims for civil penalties for the violations alleged herein. Such civil
penalty amount shall become due and payable immediately upon Respondent's receipt of a
true and correct copy of this CA/FO. In order to avoid the assessment of interest,

administrative costs, and late payment penalties in connection with such civil penalty as described in this CA/FO, Respondent must pay the civil penalty no later than the aforesaid thirty (30) calendar days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B) and EPA's *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007.

62 Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

63 Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, Complainant will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

64 The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

65 A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

66 Having determined that this Consent Agreement is in accordance with law and that the settlement penalty amount was determined after consideration of the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which include the nature, circumstances, extent and gravity of the violations, and the violator's ability to pay, ability to continue to do business, history of prior violations and degree of culpability, Complainant hereby agrees and acknowledges that payment of the civil penalty as set forth above shall be in full and final satisfaction of all claims for civil penalties which Complainant may have under Section 16(a) of TSCA for the violations alleged herein.

67 Respondent shall remit the full penalty, and/or any interest, administrative fees and late payment penalties, in accordance with Paragraphs 61 through 63 above via one of the following methods:

- a. Via U.S. Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

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

- b. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The U.S. Bank customer service contact for both regular mail and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.

- c. Via electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- d. Via automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), to the following account:

PNC Bank
ABA No. 05136706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW
Washington, D.C. 20074.

The PNC Bank customer service contact, Jesse White, may be reached at 301-887-6548.

- e. Via on-line payment (from bank account, credit card, debit card), access "www.pay.gov" and enter "sfo 1.1" in the search field. Open the form and complete the required fields.

68 All payments by Respondent shall reference its name and address and the Docket Numbers of this case (TSCA-03-2009-0014). Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CA/FO. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to;

Rodney Travis Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

VI. SUBMISSION REQUIREMENTS

69 All documents, reports, notices and correspondence to be submitted or sent pursuant to or concerning this CA/FO shall be sent by: certified mail, return receipt requested; overnight delivery (*by Federal Express or other non-U.S. Postal Service Express mail*) or by hand delivery, as follows:

If to EPA:

Annie Skidmore
Lead Compliance Officer (3LC61)
United States Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Rodney T. Carter
Senior Assistant Regional Counsel (3RC30)
United States Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

If to the Respondent:

Mr. Michael Woodward
Woodward Properties, Inc.
4920 City Avenue, Suite 200
Philadelphia, PA 19131
and

Jonathan H. Spergel, *Esquire*
Manko Gold Katcher Fox LLP.
401 City Ave., Suite 500
Bala Cynwyn, PA 19004

VII. OTHER APPLICABLE LAWS

70 Nothing in this CA/FO shall relieve the Respondent of any duties otherwise imposed upon any of them by applicable federal, state or local laws and/or regulations.

VIII. FULL AND FINAL SATISFACTION

71 The settlement agreed to in this Consent Agreement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have under Sections 15 and 16 of TSCA, 7 U.S.C. §§ 2614 and 2615, for the specific violations alleged herein. Compliance with this CA/FO shall not be a defense to any action commenced at any time for any other violation of the federal laws or regulations administered by EPA.

IX. FAILURE TO COMPLY

72 Failure by the Respondent to comply with the requirements of this Consent Agreement may subject the Respondent to an additional enforcement action, including an action to collect any outstanding penalties or interest.

X. PARTIES BOUND

73 This CA/FO shall apply to and be binding upon EPA, the Respondent and Respondent's employees, agents, successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent represents that he or she is fully authorized by Respondent to execute this Consent Agreement and legally bind Respondent to the terms and conditions of this CA/FO.

XI. EFFECTIVE DATE

74 The effective date of this Consent Agreement and of the attached Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

XII. ENTIRE AGREEMENT

75 This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and the attached Final Order.

XIII. EXECUTION.

76 The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature thereto that Respondent is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions hereof.

For Respondent:

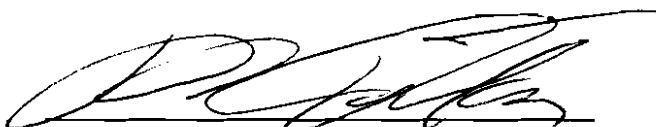
Date: 6-22-09

By: 

Michael J. Woodward
President
Woodward Properties Inc.

For Complainant United States Environmental Protection Agency, Region III:

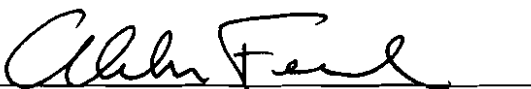
6/19/09
Date

By: 

Rodney Travis Carter
Senior Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law within the Consent Agreement and other pertinent matters, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Judicial Officer or the Regional Administrator issue the Final Order attached hereto.

6/25/09
Date

By: 

Abe Ferdas, Director
Land and Chemicals Division

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

IN THE MATTER OF:)
)
Woodward Properties Inc.)
4920 City Avenue, Suite 200)
Philadelphia, PA 19131)
)
Respondent)
)
)
Pelham Court Apartments)
6803-09 Emlen Street)
Philadelphia, PA 19119)
)
)
Fairview Arms Apartments)
5219 Wynnefield Avenue)
Philadelphia, PA 19131)
)
)
Bala Apartments)
2491 N. 50th Street)
Philadelphia, PA 19131)

Docket No. TSCA-3-002009-0014

FINAL ORDER

UNDER SECTION 16 (a) OF
THE TOXIC SUBSTANCES
CONTROL ACT

Target Housing


FINAL ORDER

Complainant, the Director of the Land and Chemicals Division (formerly known as the Waste and Chemicals Management Division), U.S. Environmental Protection Agency - Region III, and **Woodward Properties Inc.** have executed a document entitled "Consent Agreement," which I hereby ratify in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing "Consent Agreement" are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO the Consolidated Rules of Practice, and having determined that the civil penalty agreed to by the Parties to the Consent Agreement is based on consideration of the factors set forth in TSCA § 16(a)(2)(B), 15 U.S.C. §2615(a)(2)(B), IT IS HEREBY ORDERED that Respondent pay a civil penalty of Forty Eight Thousand, Nine Hundred and Thirty Five dollars (\$48,935.00) and comply with the terms and conditions of the Consent Agreement.

This **FINAL ORDER** shall become effective upon filing with the Regional Hearing Clerk.

Date: 6/29/09



Renée Sarajian
Regional Judicial Officer