



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 27, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7668 0684

Jake Howlett, Esquire
Viviano, Pagano, & Howlett PLLC
48 South Main Street, Suite 3
Mount Clemens, Michigan 48043

Consent Agreement and Final Order In the Matter of
Wildwood Apartments LLC. Docket No. TSCA-05-2012-0027


Dear Mr. Howlett:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on September 27, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,000 is to be paid in the manner described in paragraphs 69 through 71. Please be certain that the number **BD 2751247X027** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 27, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Leslie Blake
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Kasey Barton, Counsel for Complainant/C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Wildwood Apartments LLC)
Jackson, Michigan)
)
Respondent.)
_____)

Docket No. TSCA-05-2012-0027
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

RECEIVED
SEP 27 2012

Consent Agreement and Final Order

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Wildwood Apartments LLC, a Michigan limited liability company with a place of business located at 3515 Stonewall Road, Jackson, Michigan 49203.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the general allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550, amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Sections 401 through 412, Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682(a), requires EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires EPA to promulgate regulations for conducting renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings built before 1978, and commercial buildings.

13. Pursuant to 402(a) of TSCA, 15 U.S.C. § 2682(a), EPA promulgated regulations at 40 C.F.R. Part 745, titled lead-based paint poisoning prevention in certain residential structures, prescribing procedures and requirements for the accreditation of training programs and renovations, procedures and requirements for the certification of individual and firms engaged in lead-based paint activities, and work practice standards for performing such activities. *See* 61 Fed. Reg. 45778 (August 29, 1996).

14. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations at 40 C.F.R. Part 745 Subpart E, titled residential property renovation, prescribing procedures and requirements for renovation and remodeling activities, including the accreditation of training programs, certification of individuals and firms, and work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities. *See* 73 Fed. Reg. 21691 (April 22, 2008).

15. Under 40 C.F.R. § 745.81(a), each firm that performs for compensation a renovation of target housing or a child occupied facility must be certified by EPA and by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities in target housing and/or child occupied facilities, and must comply with the specified work practice and recordkeeping requirements at 40 C.F.R. §§ 745.85-86 by April 22, 2010. EPA stated that it would not take enforcement action for violations of the firm certification requirement until October 1, 2010. *See* Memorandum from Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance, dated June 18, 2010.

16. 40 C.F.R. § 745.83 defines “firm” to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

17. 40 C.F.R. § 745.223 defines “common area” to mean a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

18. 40 C.F.R. § 745.83 defines “renovation” to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in

insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

19. 40 C.F.R. § 745.83 defines “renovator” to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

20. 40 C.F.R. § 745.103 defines “target housing” to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

21. 40 C.F.R. § 745.89 provides that firms that perform renovations for compensation must apply and obtain certification from EPA to perform renovations or dust sampling. *See also* 40 C.F.R. § 745.85(a).

22. 40 C.F.R. § 745.89(d)(1) provides that firms performing renovations must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

23. 40 C.F.R. § 745.85(a)(1) provides that firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area before beginning the renovation.

24. 40 C.F.R. § 745.85(a)(2) provides that, before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any

other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed.

25. 40 C.F.R. § 745.85(a)(2)(i)(C) provides that, for interior renovations, the firm must close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and cover doors used as an entrance to the work area in a manner that allows workers to pass through while confining the dust and debris to the work area.

26. 40 C.F.R. § 745.85(a)(2)(i)(D) provides that, for interior renovations, the firm must cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

27. 40 C.F.R. § 745.85(a)(4)(i) provides that the firm must contain waste from renovation activities so as to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

28. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E, for a period of 3 years following completion of the renovation. This includes documentation that the firm complied with the work practice standards in 40 C.F.R. § 745.85, documentation that a certified renovator was assigned to the project, and documentation that the certified renovator performed or directed workers who performed the renovation activities.

29. Under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87, failure to comply with a provision of Subchapter IV of TSCA and its implementing regulations is unlawful, and may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

30. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

General Allegations

31. Respondent owns a residential apartment building in Jackson, Michigan, located at 200 Steward Street (Respondent's property).

32. Respondent is a limited liability company and is therefore a "firm" as defined in 40 C.F.R. § 745.223.

33. Respondent's property contains indoor portions that are generally accessible to all occupants, such as hallways and stairwells, and are therefore "common areas" as that term is defined in 40 C.F.R. § 745.223.

34. On December 22, 2010, the Michigan Department of Community Health (MDCH) received a complaint concerning renovation activities conducted by Respondent in a common area at Respondent's property.

35. On December 22, 2010, MDCH conducted an inspection to observe the ongoing renovation activities in a common area at Respondent's property.

36. On January 3, 2011, MDCH sent Respondent a Request for Records letter concerning the renovation activities described in paragraphs 34 and 35, above.

37. On February 21, 2011, MDCH received Respondent's revised response to the January 3, 2011 Request for Records letter ("response letter").

38. Based on information contained in the response letter, from December 1, 2010 through December 30, 2010, Respondent conducted the following activities in the common area of its property located at 200 Steward Street: removed approximately 500 square feet of loose plaster and replaced it with drywall; finished the drywall with joint topping compound; and caulked and painted the drywall.

39. In the response letter, Respondent stated that the property located at 200 Steward was built around 1913.

40. On June 9, 2011, MDCH conducted a follow-up inspection at Respondent's property to observe the completed renovation activities described in paragraph 38, above.

41. Respondent's property was constructed before 1978, and is therefore "target housing" as defined in 40 C.F.R. § 745.103.

42. The activities Respondent conducted at 200 Steward Street from December 1, 2010 through December 30, 2010, described in paragraph 38, above, were modifications of the building's existing structure or portions thereof that resulted in the disturbance of painted surfaces and, therefore, is a "renovation" as defined in 40 C.F.R. § 745.83.

43. Respondent either performed or directed workers to perform the renovation described in paragraph 38, above, and, therefore, is a "renovator" as defined in 40 C.F.R. § 745.83.

44. As an owner of rental properties, Respondent receives payment from tenants, in part, for maintenance and renovation activities conducted on the properties and therefore any renovations performed by Respondent on its rental properties are for compensation within the meaning of 40 C.F.R. § 745.89.

Count 1

45. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

46. Respondent did not apply to EPA for certification to perform renovations and therefore was not a certified firm when performing the renovation described in paragraph 38, above, as required by 40 C.F.R. § 745.89(a).

47. Respondent's failure to apply and obtain certification from EPA before performing the renovation described in paragraph 38, above, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

48. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

49. The renovation conducted by Respondent and described in paragraph 38, above, was not performed by certified renovators or by individuals who have been trained by a certified renovator, as required by 40 C.F.R. § 745.89(d)(1).

50. Respondent's failure to ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

51. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

52. Respondent did not post signs clearly defining the work area and warn occupants and other persons not involved in renovation activities to remain outside of the work area before conducting the renovation referred to in paragraph 38, above, as required by 40 C.F.R. § 745.85(a)(1).

53. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area before beginning the renovation, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

54. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

55. During the renovation described in paragraph 38, above, Respondent did not isolate the work area so that no dust or debris left the work area while the renovation was performed. In addition, Respondent did not maintain the integrity of the containment by ensuring that any plastic or other impermeable materials were not torn or displaced, and did not take any other steps necessary to ensure that no dust or debris left the work area while the renovation was performed, as required by 40 C.F.R. § 745.85(a)(2).

56. Respondent's failure to isolate the work area so that no dust or debris left the work area while the renovation was being performed, failure to maintain the integrity of the containment by ensuring that any plastic or other impermeable materials were not torn or displaced, and failure to take any other steps necessary to ensure that no dust or debris leaves the work area while the renovation was being performed, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

57. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

58. During the renovation described in paragraph 38, above, Respondent did not close the windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and cover doors used as an entrance to the work area in a manner that allowed workers to pass through while confining the dust and debris to the work area, as required by 40 C.F.R. § 745.85(a)(2)(i)(C).

59. Respondent's failure to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and cover doors used as an entrance to the work area with plastic sheeting or other impermeable material in a manner that allowed workers to pass through while confining dust and debris to the work area, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

60. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

61. During the renovation described in paragraph 38, above, Respondent did not cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, as required by 40 C.F.R. § 745.85(a)(2)(i)(D).

62. Respondent's failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7

63. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

64. During the renovation described in paragraph 38, above, Respondent did not contain the waste from the renovation activities so as to prevent releases of dust of debris before the waste was removed from the work area for storage or disposal, as required by 40 C.F.R. § 745.85(a)(4)(i).

65. Respondent's failure to contain the waste from the renovation activities so as to prevent releases of dust of debris before the waste was removed from the work area for storage or disposal constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 8

66. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

67. Following the completion of the renovation described in paragraph 38, above, Respondent did not retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, as required by 40 C.F.R. § 745.86(a).

68. Respondent's failure to retain records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E following completion of the renovation constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Civil Penalty

69. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$3,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered *EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010, and the *Pilot Renovation, Repair and Painting ("RRP") Rule Penalty Program for Micro-Businesses*, dated May 3, 2012.

70. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,000 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must state the case title ("In the Matter of: Wildwood Apartments LLC"), the docket number of this CAFO, and the billing document number.

71. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Leslie Blake (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Kasey Barton (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

72. This civil penalty is not deductible for federal tax purposes.

73. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

74. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past

due.

General Provisions

75. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

76. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

77. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, and other applicable federal, state, and local laws.

78. Respondent certifies that it is complying with Section 402 of TSCA, 15 U.S.C. § 2682, and its implementing regulations at 40 C.F.R. Part 745.

79. The terms of this CAFO bind Respondent, and its successors and assigns.

80. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

81. Each party agrees to bear its own costs and attorneys fees in this action.

82. This CAFO constitutes the entire agreement between the parties.


Wildwood Apartments LLC, Respondent

9-18-12
Date


David White, Owner
Wildwood Apartments LLC

United States Environmental Protection Agency, Complainant

September 25, 2012
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Wildwood Apartments LLC
Docket No. TSCA-05-2012-0027

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-26-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Wildwood Apartments LLC., was filed on September 27, 2012 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7668 0684, a copy of the original to the Respondent:

Jake Howlett, Esquire
Viviano, Pagano, & Howlett PLLC
48 South Main Street, Suite 3
Mount Clemens, Michigan 48043

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Kasey Barton, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick J. Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. TSCA-05-2012-0027

BA# 2751247X027

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