



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 22 2008

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Wayne Crowley
Bush, Crowley, Leverett & Leggett, LLP
561 D.T. Walton, Sr. Way
Macon, GA 31201

SUBJ: Docket No. TSCA-04-2008-2546(b)
Wesleyan Garden Apartments

Dear Mr. Crowley:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

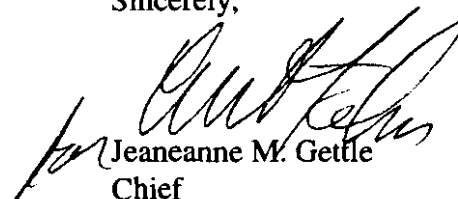
As stated in Section V of the CAFO, the assessed penalty of \$16,604.00 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Kevin L. Woodruff at (404) 562-8828.

Also enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document puts you on notice of your potential duty to disclose to the

Securities and Exchange Commission any environmental enforcement actions taken by EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Sincerely,


for Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Wesleyan Garden Apartments)
)
)
Respondent.)
_____)

Docket No. TSCA-04-2008-2546(b)

RECEIVED
EPA REGION IV
2008 SEP 22 AM 10:11
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Wesleyan Garden Apartments.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The Administrator of EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F under the authority of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Pursuant to 42 U.S.C. § 4852d(b)(5), a violation of any rule in 40 C.F.R. Part 745, is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689. Any person who violates Section 409 of TSCA may be assessed a penalty of up to \$10,000 for each such violation, in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and Section 1018. For a violation occurring after January 31, 1997, a penalty of up to \$11,000 may be assessed pursuant to 40 C.F.R. Part 19, as amended, and in accordance with 40 C.F.R. § 745.118(f).
4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Kevin L. Woodruff
Children's Health, Lead and Asbestos
Management Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-8828.

III. Specific Allegations

6. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at: 2056 Vineville Avenue #28, Macon, Georgia 31204, 2056 Vineville Avenue #57, Macon, Georgia 31204, 2056 Vineville Avenue #32, Macon, Georgia 31204 and 2056

Vineville Avenue #23, Macon, Georgia 31204. These residential housings are “target housing,” as defined at 40 C.F.R. § 745.103.

7. Based on information obtained by EPA on or about July 20, 2007, relating to Respondent’s contracts to lease its target housing described above in paragraph 6, EPA alleges that Respondent violated Section 409 of TSCA and 40 C.F.R. Part 745, Subpart F. The penalty associated with this action is based on the following regulations:
8. Pursuant to 40 C.F.R. § 745.107(a)(2), a Lessor shall disclose to the Lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing.
9. Respondent failed to disclose to the Lessee the presence of any known lead-based paint in at least four leases.
10. Pursuant to 40 C.F.R. § 745.107(a)(3), A Lessor shall disclose to each Agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing.
11. Respondent failed to disclose to each Agent the presence of any known lead-based paint in at least four leases.
12. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment to or within the contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being purchased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.
13. Respondent failed to include the appropriate statement in at least four leases.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.

15. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
16. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart F.
18. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA and Complainant reserve all other civil and criminal enforcement authorities, including the authority to address imminent hazards.

Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.
19. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of 40 C.F.R. Part 745, Subpart F.

V. Final Order

20. Respondent is assessed a civil penalty of SIXTEEN THOUSAND SIX HUNDRED FOUR DOLLARS (\$16,604.00) which shall be paid within 30 days from the effective date of this CAFO.
21. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

**The check shall reference on its face the name of the
Respondent and Docket Number of this CAFO.**

22. At the time of payment, Respondent shall send a separate copy of the check or wire transfer and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Kevin L. Woodruff
Children's Health, Lead &
Asbestos Management Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

23. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

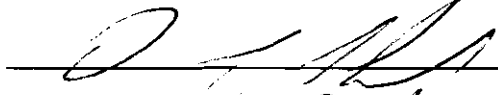
25. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
26. This CAFO shall be binding upon the Respondent, its successors and assigns.
27. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

VI. Effective Date


28. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Wesleyan Garden Apartments
Docket No.: TSCA-04-2008-2546(b)

By:  (Signature) Date: 9-8-08
Name: Daniel Snyder (Typed or Printed)
Title: President (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 9/18/08
Beverly H. Barnister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 18th day of September 2008.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Wesleyan Garden Apartments, Docket Number: TSCA-04-2008-2546(b), to the addressees listed below.

Kevin Woodruff
Children's Health, Lead &
Asbestos Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

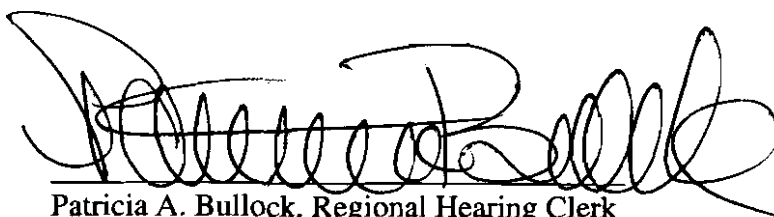
Robert Caplan
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(via EPA's internal mail)

Mr. Wayne Crowley
Bush, Crowley, Leverett & Leggett, LLP
561 D.T. Walton, Sr. Way
Macon, GA 31201

(via Certified Mail, Return Receipt Requested)

Date: 9-22-08



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511