



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2008 SEP 23 AM 10:14

EPA REGION VIII  
HEARING CLERK

DOCKET NO.: TSCA-08-2008-0021

IN THE MATTER OF:

APARTMENT MANAGEMENT  
CONSULTANTS, LLC

RESPONDENT

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)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 23<sup>rd</sup> DAY OF September, 2008.

Elyana R. Sutin  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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EPA REGION 8  
HEARING CLERK

IN THE MATTER OF: )  
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Apartment Management Consultants, LLC, )  
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Respondent )  
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**COMPLAINT AND CONSENT AGREEMENT  
(SIMULTANEOUS AND COMBINED)**  
**DOCKET NO. : TSCA-08-2008-0021**

**COMPLAINT**

**GENERAL ALLEGATIONS**

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act (Residential Lead Hazard Act) and the Toxic Substances Control Act (TSCA). 42 U.S.C. § 4851 *et seq.*, and 15 U.S.C. § 2601 *et seq.* EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the Code of Federal Regulations (C.F.R.) and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Rules of Practice), 40 C.F.R. part 22, and this COMPLAINT AND CONSENT AGREEMENT (simultaneous combined action) is authorized by the rules. 40 C.F.R. § 22.13(b). The undersigned EPA officials have been properly delegated the authority to issue this action. These general allegations apply to each violation below.

2. On April 30, 2007, and November 9, 2007, an authorized representative of EPA conducted Residential Lead Hazard Act and TSCA compliance reviews for the Britannia Heights Apartments located at 1221-1265 South Bellaire Street, Denver, Colorado. Apartment Management Consultants, LLC was responsible for ensuring compliance at the property. During the compliance and subsequent case reviews, EPA observed that Britannia Heights Apartments was not in compliance with the regulations implementing the Residential Lead Hazard Act and TSCA. These observed violations are set out in detail in Paragraph 6 in this Complaint and Consent Agreement.

3. Britannia Heights Apartments located at 1221-1265 South Bellaire Street, Denver, Colorado, is "residential real property" within the meaning of §1004(24) of the Residential Lead Hazard Act, 42 U.S.C. § 4851b (24), and was constructed before 1978.

4. Respondent is Apartment Management Consultants, LLC (Respondent). Respondent began management of the property on September 11, 2006. Respondent was, and, at all times relevant to this simultaneous combined action, has been an agent to the owners of the Britannia Heights Apartments, as that term is defined in 40 C.F.R. § 745.103.

5. EPA regulations require, among other things, that the agent shall, prior to obligating a lessee under a contract to lease or rent the housing constructed before 1978, provide or include in or attach to the leasing contract, (1) an EPA-approved lead hazard information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence), (4) a list of any records or reports available to the agent related to lead-based paint or hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she received the above information, and (6) signatures (dated) by both parties certifying the accuracy of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).

### VIOLATIONS

6. On one or more occasions, Respondent failed to comply with the following requirements:

- a. Respondent failed to provide an EPA-approved lead hazard information pamphlet prior to entering into lease contracts in violation of 40 C.F.R. § 745.107(a) (1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- b. Respondent failed to include a lead warning statement within the lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- c. Respondent failed to include a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence), within the lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- d. Respondent failed to include a list of any records or reports available to the owner related to lead-based paint or hazards (or a statement that no such records exist) within lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- e. Respondent failed to include a statement by the renters/lessees that the renters/lessees received the information described above in violation of 40 C.F.R. § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

- f. Respondent failed to include the signature of the lessor and lessee certifying to the accuracy of their statements, to the best of their knowledge along with the dates of signature, in violation 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

### CONSENT AGREEMENT

7. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.

8. Respondent waives his/her right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Complaint and Consent Agreement.

9. This Complaint and Consent Agreement, upon incorporation into a Final Consent Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.

10. Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, as amended, authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of TSCA except for violations of the Lead-Based Paint Hazard Reduction Act which shall not exceed \$11,000 per violation. In arriving at the amount of the penalty, EPA, as required by section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), has taken into consideration, to the extent known at this time, the nature, circumstances, extent, and gravity of the violation, and, with respect to Respondent, the ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require.

11. Based on the factors listed in paragraph 10, Respondent's acknowledgement that it is in full compliance with the requirements of TSCA, and Respondent's agreement to perform a Supplemental Environmental Project (SEP), EPA has determined that an appropriate civil penalty to settle this action is **Seven Hundred and Seven Dollars (\$707)**.

12. Respondent consents, for the purpose of settlement, to the issuance of a final consent order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph. Respondent further consents, for the purpose of settlement, to the performance of the SEP described below and to pay the civil penalty as follows:

- a. Payment is due within 30 calendar days from the date written on a Final Consent Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the

due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact Natalie Pearson  
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22-checking  
Environmental Protection Agency  
Account 310006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter sfo1.1 in the search field

Open form and complete required fields

**A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:**

Daniel Webster, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Tina Artemis, 8RC  
Regional Hearing Clerk  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final consent order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the final consent order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

## **Supplemental Environmental Project**

### 13. Description of the SEP:

- a. Respondent shall perform a SEP that involves the design of a lead based paint training module intended to educate both property owners and apartment management companies regarding the Residential Lead Hazard Act applicable to their operations. The project will include the development of a Power Point training module and written materials serving as reference guides for leasing agents. Lastly, the project will include the delivery of a minimum of three training sessions. The target audience for the training sessions will include apartment owners and employees of property management companies.
- b. Respondent shall complete the work on the SEP no later than April 1, 2009, unless the parties agree in writing to an extension of the completion date.

The total expenditure for the SEP shall be not less than Two Thousand Two Hundred and Five Dollars (\$2,205). Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

### 14. SEP Reports:

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the SEP. The SEP Completion Report shall contain the following information:
  - (i) A detailed description of the SEP as implemented;
  - (ii) A description of any operating, implementing or performance problems encountered and the solutions thereto;
  - (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
  - (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.

15. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Complaint and Consent Agreement and Respondent shall become liable for stipulated penalties and late fees as set forth below.

16. Respondent agrees that EPA will have the opportunity to review the training materials for accuracy prior to finalizing the materials for use in the training sessions.

17. Respondent will provide a copy of the training materials to EPA once they have been finalized.

18. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Complaint and Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. EPA acceptance of SEP Reports.

- a. Following receipt of the SEP Completion Report described above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with the provisions herein.
- b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Complaint and Consent Agreement.

20. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

21. Respondent shall submit by first class mail all notices and reports required by this Complaint and Consent Agreement to:

Daniel Webster, 8ENF-AT  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

## **Stipulated Penalties and Late Fees**

22. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEP described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEP expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of Two Thousand Two Hundred and Five Dollars (\$2,205).
  - b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay Two Thousand Two Hundred and Five Dollars (\$2,205), less the EPA approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
  - c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.
23. Stipulated penalties for subparagraph 22(c) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
24. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions for payment of the civil penalty above. Interest and late charges shall be paid as stated in the paragraph 12.
25. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
26. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
27. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Complaint and Consent Agreement.

28. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.

29. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

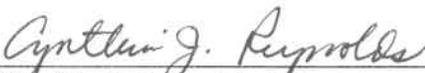
30. Each party shall bear its own costs and attorney fees in connection with this matter.

31. This Complaint and Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.

In Re: Apartment Management Consultants, LLC

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Office of Enforcement, Compliance, and  
Environmental Justice,  
Complainant.

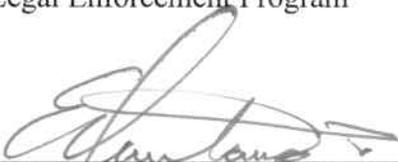
Date: 9/19/08

By:   
Cynthia J. Reynolds, Director  
Technical Enforcement Program

Date: SEP 19 2008

By:   
David J. Janik, Acting Director  
Matthew Cohn, Acting Supervisory Attorney  
Legal Enforcement Program

Date: 9/22/2008

By:   
Eduardo Quintana  
Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202-1129  
303.312.6924

In Re: Apartment Management Consultants, LLC

APARTMENT MANAGEMENT CONSULTANTS, LLC,

Respondent.

Date: 9/15/08

By: 

Printed Name: Greg W. Seman

Title: Manager

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND CONSENT AGREEMENT (SIMULTANEOUS AND COMBINED)/FINAL ORDER, DOCKET NO.: TSCA-08-2008-0021** was filed with the Regional Hearing Clerk on September 23, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on September 23, 2008, to:

Melanie Granberg  
Gablehouse Calkins & Granberg, LLC  
410 17<sup>th</sup> St., Suite 1375  
Denver, CO 80202

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MSD-0002)  
Cincinnati, OH 45268

September 23, 2008

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

