



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

**MAY 10 2012**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Kenneth P. Polsinelli  
Chief Real Estate Officer  
McKinley, Inc.  
320 N. Main Street, Suite 200  
Ann Arbor, Michigan 48104

Re: McKinley, Inc. d/b/a The Villages at Old Concord  
Ratified Consent Agreement and Final Order  
Docket No. TSCA-04-2012-2601(b)

Dear Mr. Polsinelli:

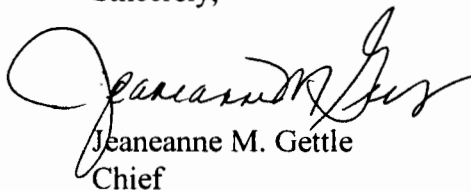
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mrs. Andrea Lippitt of the EPA Region 4 staff at (404) 562-8983.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and "G".

Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
 McKinley, Inc. d/b/a )  
 The Villages At Old Concord )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Docket No.: TSCA-04-2012-2611(b)

RECEIVED  
EPA REGION IV  
2012 MAY 10 PM 1:50  
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, U. S. Environmental Protection Agency, Region 4. Respondent is McKinley, Inc. d/b/a The Villages At Old Concord.
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 the 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, also known as Title X of the Housing and Community Development Act of 1992. Pursuant to Title X, it is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with a provision of Title X or any rule or order issued under Title X.
4. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, the penalty for each violation of Title X of TSCA shall not exceed \$10,000. The Debt Collection Improvement Act of 1996 requires EPA to review and adjust penalties, as necessary, for inflation at least once every four years. As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the revised maximum penalty for each violation of Title X occurring after January 30, 1997, through January 12, 2009, is \$11,000 and for each violation occurring after January 12, 2009, the maximum penalty is \$16,000.
5. 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. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 12-2-A. Pursuant to the aforementioned Delegations, the Director of Air, Pesticides and Toxics Management Division has authority to commence an enforcement action as the Complainant in this matter.

6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Mrs. Andrea Lippitt  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8983

### **III. Specific Allegations**

7. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 1901 Old Concord Road, Smyrna, GA. These residential units are "target housing," as defined at 40 C.F.R. § 745.103.
8. Based on information obtained by EPA on or about July 15, 2011, relating to Respondent's contracts to lease its target housing described above, EPA alleges that Respondent violated Section 409 of TSCA and 40 C.F.R. Part 745, Subpart F as follows:
- a. Pursuant to 40 C.F.R. § 745.107(a)(1), a Lessor shall provide the Lessee(s) an EPA-approved lead hazard information pamphlet before the Lessee(s) is obligated under any contract to lease target housing. Respondent failed to provide Lessee(s) an EPA-approved pamphlet in at least one lease.
  - b. Pursuant to 40 C.F.R. § 745.107(a)(2), a Lessor shall disclose to the Lessee(s) the presence of any known lead-based paint and/or lead-based paint hazards in the target housing. Respondent failed to disclose to the Lessee(s) the presence of any known lead-based paint in at least one lease.
  - c. 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, and the existence of any available records or reports pertaining to lead-based

- paint. Respondent failed to disclose to the Agent the presence of any known lead-based paint and the existence of any records or reports in at least one lease.
- d. Pursuant to 40 C.F.R. § 745.107(a)(4), a Lessor shall provide to the Lessee(s) any records or reports available to the Lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing. Respondent failed provide to the Lessee(s) any records or reports in at least one lease.
- e. Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall include, as an attachment to or within the contract, a list of any records or reports available to the Lessor that pertain to lead hazard information, or an indication that no such list exists. Respondent failed to include the appropriate information in at least one lease.
- f. Pursuant to 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include in the contract for lease a statement by the Lessee(s) affirming receipt of the information. Respondent failed to include the appropriate information in at least one lease.
- g. Pursuant to 40 C.F.R. § 745.113(b)(5), each contract to lease target housing shall include, as an attachment to or within the contract, a statement by the one or more Agents involved in the transaction to lease target housing that the Agent(s) has informed the Lessor of the Lessor's obligations and that the Agent(s) is aware of his duty to ensure compliance. Respondent failed to include the appropriate information in at least one lease.

#### **IV. Consent Agreement**

9. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
10. 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.
11. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
12. 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.
13. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
14. 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 TSCA.

#### **V. Final Order**

15. Respondent is assessed a civil penalty of **FIFTY THOUSAND TWO HUNDRED AND EIGHTY EIGHT DOLLARS (\$50,288)**. Twenty-four (24) payments will be made to complete payment of the entire civil penalty including interest. The first payment is due within thirty (30) days of the effective date of this CAFO and subsequent payments will

be due in thirty (30) day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **FIFTY THOUSAND SEVEN HUNDRED SEVENTY ONE DOLLARS AND TWENTY ONE CENTS (\$50,771.21)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment No.</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of date CAFO filed	\$ 2,115.47
2	within 60 days of date CAFO filed	\$ 2,115.47
3	within 90 days of date CAFO filed	\$ 2,115.47
4	within 120 days of date CAFO filed	\$ 2,115.47
5	within 150 days of date CAFO filed	\$ 2,115.47
6	within 180 days of date CAFO filed	\$ 2,115.47
7	within 210 days of date CAFO filed	\$ 2,115.47
8	within 240 days of date CAFO filed	\$ 2,115.47
9	within 270 days of date CAFO filed	\$ 2,115.47
10	within 300 days of date CAFO filed	\$ 2,115.47
11	within 330 days of date CAFO filed	\$ 2,115.47
12	within 360 days of date CAFO filed	\$ 2,115.47
13	within 390 days of date CAFO filed	\$ 2,115.47
14	within 420 days of date CAFO filed	\$ 2,115.47
15	within 450 days of date CAFO filed	\$ 2,115.47
16	within 480 days of date CAFO filed	\$ 2,115.47
17	within 510 days of date CAFO filed	\$ 2,115.47
18	within 540 days of date CAFO filed	\$ 2,115.47
19	within 570 days of date CAFO filed	\$ 2,115.47
20	within 600 days of date CAFO filed	\$ 2,115.47
21	within 630 days of date CAFO filed	\$ 2,115.47
22	within 660 days of date CAFO filed	\$ 2,115.47
23	within 690 days of date CAFO filed	\$ 2,115.47
24	within 720 days of date CAFO filed	\$ 2,115.39

16. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America."

**The Respondent shall note on the face of the check the Respondent's Name and the Docket Number associated with this CAFO.**

The penalty payment shall be sent by one of the methods below.



Address for payment submittal using the United States Postal Service:

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

Address for payment submittal using other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

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

17. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

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

Mrs. Andrea Lippitt  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

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

18. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has

accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

19. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
20. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **FIFTY THOUSAND TWO HUNDRED AND EIGHTY EIGHT DOLLARS (\$50,288)** within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.
21. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to

recover interest on any amount of such 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). 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 ninety (90) days of the due date.

22. 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 pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
23. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date 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.
24. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
25. This CAFO shall be binding upon the Respondent, its successors and assigns.
26. Each undersigned representative of the parties 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**

27. 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:**

By: *K. P. Polsinelli* Date: 2 MARCH 2012  
Name: KENNETH P. POLSINELLI  
Title: CHIEF REAL ESTATE OFFICER

**Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY**

By: *Carol G. Remington* Date: 5/2/12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 10<sup>th</sup> day of May, 2012

By: *Susan B. Schub*  
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 McKinley, Inc. d/b/a The Villages At Old Concord, Docket Number: TSCA-04-2012-2601(b), to the addressees listed below:

Mr. Kenneth P. Polsinelli  
Chief Real Estate Officer  
McKinley, Inc.  
320 N. Main Street, Suite 200  
Ann Arbor, Michigan 48104


(via Certified Mail, Return Receipt Requested)

Andrea Lippitt  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan, Senior Attorney  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

(via EPA's internal mail)

  
\_\_\_\_\_  
Patricia Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9511

Date: 5-10-12