



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

 1 3 2010

CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Mr. Douglas Rillstone, Esq.
Broad & Cassel
215 South Monroe Street
Suite 400
Tallahassee, Florida 32301

Re: BC-Bainbridge Bay Pointe, LLC
and BC-Bainbridge Timulquana, LLC
Docket No. TSCA-04-2010-2703(b)

Dear Mr. Rillstone:

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 \$1,684.37 is due within 30 days from the effective date. Please ensure that the face of BC-Bainbridge Bay Pointe, LLC and BC-Bainbridge Timulquana, LLC 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 BC-Bainbridge Bay Pointe, LLC and BC-Bainbridge Timulquana, LLC have any questions about this matter or their 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

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Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

2010 JUN 13 AM 7:36
HEARING CLERK
EPA REGION 4

IN THE MATTER OF:)
)
BC-Bainbridge Bay Pointe, LLC)
and BC-Bainbridge Timuquana, LLC,)
)
Respondents.)
_____)

Docket No.: TSCA-04-2010-2703(b)

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). Respondents are BC-Bainbridge Bay Pointe, LLC, and BC-Bainbridge Timuquana, LLC.
2. Complainant and Respondents 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. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (Title X), directed EPA and the Housing and Urban Development Authority (HUD) to promulgate regulations governing disclosures pertaining to residential lead-paint. Pursuant to Section 1018, EPA and HUD promulgated regulations which are codified by EPA at 40 C.F.R. Part 745, Subpart F, and by HUD at 24 C.F.R. Part 35, Subpart H. 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 with any rule or order issued under Title X. EPA and HUD have jointly determined that Respondents have violated the lead-based paint regulations. EPA and HUD also have jointly conducted settlement discussions with the Respondents. EPA, HUD, and the Respondents have agreed that the Respondents shall pay a penalty to EPA and to HUD for violations of the regulations. This CAFO resolves the alleged violations of the regulations administered by EPA and requires Respondents to pay the penalty assessed by EPA. HUD will resolve Respondents' alleged violations of the regulations administered by HUD through a separate, parallel consent agreement.
4. For purposes of enforcing Title X, the penalty for each violation applicable under Section 16 of TSCA, 15 U.S.C. § 2615, shall not be more than \$10,000, pursuant to Title X, 42 U.S.C. § 4852d(b)(5). For each violation occurring after January 31, 1997, a penalty of up to \$11,000 may be assessed pursuant to 40 C.F.R. Part 19.
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 represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

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

III. EPA's Allegations

7. Respondents are Lessors, as that term is defined in 40 C.F.R. § 745.103, of residential housing located at 4500 Baymeadows Road, Jacksonville, Florida 32217 and 6017 Roosevelt Road, Jacksonville, Florida. These residential housings are "target housing," as defined at 40 C.F.R. § 745.103.
8. Based on information obtained by EPA on or about April 5, 2005, relating to Respondents' contracts to lease its target housing described above, EPA alleges that Respondents 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 an EPA-approved lead hazard information pamphlet before the Lessee is obligated under any contract to lease target housing. Respondents failed to provide Lessee an EPA-approved pamphlet in at least thirty-five leases.

- b. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment to or within the contract, the Lead Warning Statement. Respondents failed to include an appropriate statement in at least thirty-five leases.
- c. 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. Respondents failed to include an appropriate statement in at least thirty-five leases.
- d. 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. Respondents failed to include the appropriate information in at least thirty-five leases.
- e. 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 affirming receipt of the information referenced in paragraph d above. Respondents failed to include the appropriate information in at least thirty-five leases.
- f. 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. Respondents failed to include the appropriate information in at least thirty-five leases.

g. Pursuant to 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include in the contract for lease, signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well as dates. Respondents failed to include the appropriate information in at least thirty-five leases.

IV. Consent Agreement

9. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set forth above and neither admit nor deny the factual allegations set forth above.
10. Respondents waive their rights to a hearing on the allegations contained herein, and their rights to appeal the proposed Final Order accompanying the Consent Agreement.
11. This CAFO resolves the Respondents' alleged violations of the lead-based paint regulations at 40 C.F.R. Part 745 that are administered by EPA. EPA has determined that the appropriate penalty for the violations alleged herein is \$1,684.37. Respondents consent to the assessment of the penalty proposed by EPA, and agree to pay the civil penalty as required in the Final Order (Section V) below.
12. Subsequent to EPA's initiation of this enforcement proceeding, Respondents hired a certified consultant to conduct a lead-based paint inspection and a lead-based paint risk assessment of the target housing specified above to identify lead-based paint and/or lead-based paint hazards. Based on the results of the lead-based paint inspection and lead-based paint risk assessment, the consultant determined that Respondents' target housing is free of lead-based paint. EPA has reviewed the consultant's inspection report and concurs in the findings. As a result, Respondents will no longer be required to comply

with the lead-based paint disclosures regulations at the two properties specified in this CAFO.

13. 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 reserves 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 the Respondents' responsibility to comply with said laws and regulations.
14. Complainant and Respondents 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

15. Respondents shall jointly pay a civil penalty of **ONE THOUSAND SIX HUNDRED EIGHTY FOUR DOLLARS and THIRTY SEVEN CENTS** (\$1,684.37) for the violations alleged herein, which shall be paid within 30 days from the effective date of this CAFO.
16. Respondents 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.

17. At the time of payment, Respondents 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
Lead and Children's
Health Section
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960;

and,

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

18. For the purposes of state and federal income taxation, Respondents 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 Respondents to deduct any such payments shall constitute a violation of this CAFO.
19. 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.

20. Complainant and Respondents shall bear their own costs and attorney fees in this matter.
21. This CAFO shall be binding upon the Respondents, their successors and assigns.
22. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to this CAFO.

[The remainder of this page is intentionally left blank]

VI. Effective Date

23. 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:

Docket No.: TSCA-04-2010-2703(b)

Respondent: BC-BAINBRIDGE BAY POINTE, LLC

By:  (Signature) Date: 5-17-10

Name: Joseph F. Mullen (Typed or Printed)

Title: Senior vice president (Typed or Printed)

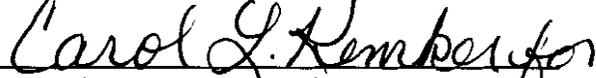
Respondent: BC-BAINBRIDGE TIMULQUANA, LLC

By:  (Signature) Date: 5-17-10

Name: Joseph F. Mullen (Typed or Printed)

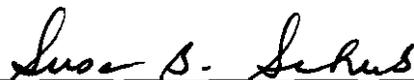
Title: Senior vice president (Typed or Printed)

Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 6/14/10

Kenneth R. Lapierre, Acting Director
Air, Pesticides and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 12th day of July, 2010.

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: BC-Bainbridge Bay Pointe, LLC and BC-Bainbridge Timulquana, LLC, Docket Number: TSCA-04-2010-2703(b), to the addressees listed below.

Kevin Woodruff (via EPA's internal mail)
Lead and Children's
Health Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Robert Caplan (via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

Mr. Douglas Rillstone, Esq. (via Certified Mail, Return Receipt Requested)
Broad & Cassel
215 South Monroe Street
Suite 400
Tallahassee, FL 32301

Date: 7-13-10


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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 6/15/10 (Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504 (Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree USAO COLLECTS

Administrative Order/Consent Agreement FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree DOJ COLLECTS

Oversight Billing - Cost Package required: Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: BC-Bainbridge Bay Pointe LLC + BC-Bainbridge Timulquana LLC (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 168437 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2010 2703(b)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)