



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

JUL 26 2007

FEDERAL EXPRESS

Mr. Don Loftis
Mr. Ron Johnson
Montclair Apartments Office
4126 Mountain Creek Road
Chattanooga, Tennessee 37415

SUBJ: Consent Agreement and Final Order
Docket No. TSCA-04-2007-2727(b)

Dear Mr. Loftis and Mr. Johnson:

Enclosed please find an executed copy of the ratified Consent Agreement and Final Order (CAFO) in the above referenced matter. The CAFO is effective as of the date of filing with the Regional Hearing Clerk. Please make note of the provisions in the CAFO, paragraphs 13 and 14, with respect to payment of the assessed penalty which must begin no later than 30 days from the effective date of the CAFO.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of the potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency (EPA). If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the Notice.

If you have any questions, please contact Ms. Andrea Lippitt of the EPA Region 4 staff at (404) 562-8983.

Sincerely,

A handwritten signature in black ink that reads "Joanne Benante".

Joanne Benante
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Montclair Apartments)
)
Respondent)
_____)

Docket Number: TSCA-04-2007-2727(9)

RECEIVED
EPA REGION 4
2007 JUL 26 AM 10:29
HEARING CLERK

CONSENT AGREEMENT 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), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Montclair Apartments (hereinafter, "Respondent").

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, 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.

III. Specific Allegations

5. Respondent is a lessor, as defined at 40 C.F.R. § 745.103, of residential housing identified as Montclair Apartments, located in Chattanooga, Tennessee 37415. This residential housing is “target housing,” as defined at 40 C.F.R. § 745.103.

6. Based on information obtained by EPA on or about May 24, 2006, relating to Respondent’s contracts to lease its target housing described above, EPA alleges that Respondent violated Section 409 of TSCA and the following regulations:

- 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.

Respondent failed to provide lessees an EPA-approved pamphlet.

- 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, a “Lead Warning Statement”.

Respondent failed to include the required “Lead Warning Statement”.

- 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 leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

Respondent failed to include an appropriate statement.

- 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 pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee, or an indication that no such records or reports are available.

Respondent failed to include the appropriate information.

IV. Consent Agreement

7. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

8. Respondent waives its right to a hearing on the allegations contained herein.

9. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

10. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the requirements of 40 C.F.R. Part 745, Subpart F.

11. Compliance with this CAFO shall resolve the allegations of 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 pursue criminal enforcement.

12. 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

13. Respondent is assessed a civil penalty of *Three Thousand, Six Hundred, Ten Dollars and sixty cents (\$3610.60)* plus interest, which is to be paid over a one year period in twelve (12) monthly payments of *Three Hundred, Seven Dollars and Forty Four Cents (\$307.44)* totaling *Three Thousand, Six Hundred, Eighty Nine Dollars and Twenty Eight Cents (\$3689.28)*. These monthly payments shall begin within thirty (30) calendar days of the effective date of this CAFO, and subsequent payments are due in thirty day (30) intervals over one year. Respondent shall make payments in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Due</u>
Within 30 days of filing CAFO	\$307.44
Within 60 days of filing CAFO	\$307.44
Within 90 days of filing CAFO	\$307.44
Within 120 days of filing CAFO	\$307.44
Within 150 days of filing CAFO	\$307.44
Within 180 days of filing CAFO	\$307.44
Within 210 days of filing CAFO	\$307.44
Within 240 days of filing CAFO	\$307.44
Within 270 days of filing CAFO	\$307.44
Within 300 days of filing CAFO	\$307.44
Within 330 days of filing CAFO	\$307.44
Within 360 days of filing CAFO	\$307.44

14. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to one of the following addresses:

For payment submittal by U.S. Postal Service:

U.S. Environmental Protection Agency
Box 371099M
Pittsburgh, PA 15251

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

Mellon Client Service Center
ATTN: Shift Supervisor, Room 0690
Lockbox 371099M
500 Ross Street
Pittsburgh, PA 15262-0001

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

15. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been 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, S.W.
Atlanta, GA 30303

Andrea Lippitt
Children's Health, Lead and Asbestos
Management Section
U.S. EPA Region 4
SNAFC – 12th Floor
61 Forsyth Street, S.W.
Atlanta, GA 30303

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

16. 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.

...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 principle amount not paid within 90 days of the due date.

18. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

19. This CAFO shall be binding upon the Respondent, its successors and assigns.

20. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Andrea Lippitt
Children's Health, Lead and Asbestos
Management Section
U.S. EPA Region 4
SNAFC – 12th Floor
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8983

21. 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 bind that party to it.

VI. Effective Date

22. 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: Montclair Apartments

Docket Number: TSCA-04-2007-2727(b)

By: Don Loftis
Mr. Don Loftis, Montclair Apartments

Date: July 6, 2007

Name: DON LOFTIS

(Typed or Printed)

Title: Partner

(Typed or Printed)

By: Ron Johnson
Mr. Ron Johnson, Montclair Apartments

Date: July 6, 2007

Name: RON JOHNSON

(Typed or Printed)

Title: partner

(Typed or Printed)

COMPLAINANT: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Carol G. Kamberger
Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
Region 4

Date: 7/13/07

APPROVED AND SO ORDERED this 24th day of July, 2007

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: Montclair Apartments, Docket Number: TSCA-04-2007-2727(b), to the addressees listed below.

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

(via EPA's internal mail)

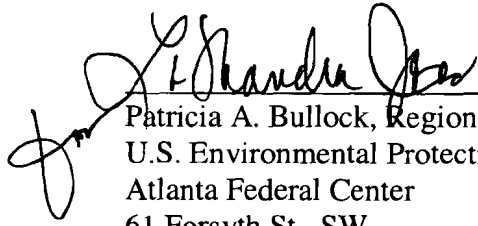
Nancy Tommelleo
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(via EPA's internal mail)

Mr. Don Loftis
Mr. Ron Johnson
Montclair Apartments Office
4126 Mountain Creek Road
Chattanooga, Tennessee 37415

(via Certified Mail, Return Receipt Requested)

Date: 7/26/07



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: Saund, Wilson on 7/20/07
(Name) (Date)

in the OEA, OATGL 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

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Montclair Apartments
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 36,10.60 (36,89.28 incl interest)
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2007 2727

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT 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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |