



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8900

MAY 13 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William O. Byars
WB Real Estate, L.L.C.
3512 7th Ave South
Birmingham, Alabama 35222

Re: Heritage Hills Townhomes
Ratified Consent Agreement and Final Order
Docket No.: TSCA-04-2011-2531(b)

Dear Ms. Byars:

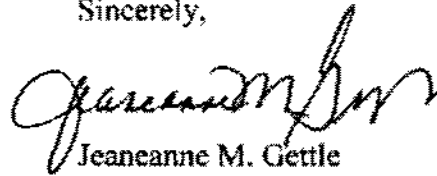
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO with respect to payment of the assessed penalty of \$3,300.00, the first payment of \$417.15 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 Mr. Bryson Lehman either by telephone at (513) 487-2123 or by written correspondence to his attention at the U.S. Environmental Protection Agency's (EPA's) Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or their compliance status in the future, please call me at (404) 562-8979 or Mrs. Andrea Lippitt at (404) 562-8983.

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 your client on notice of their potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by EPA.

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
Substances Branch

Enclosures

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA**

IN THE MATTER OF:)
)
Heritage Hills Townhomes,)
)
)
Respondent.)
_____)

Docket No.: TSCA-04-2011-2531(b)

RECEIVED
JAN 19 11 51 AM '11

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 Heritage Hills Townhomes.
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 CFR § 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. § 4852(d), 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. For purposes of enforcing Title X under TSCA, the penalty for each violation applicable under Section 16 of TSCA, 15 U.S.C. § 2615, shall not be more than \$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 occurring after January 30, 1997, through January 12, 2009, is \$11,000 and for each violation occurring after January 12, 2009, the maximum penalty for each violation is \$16,000.
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:

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

6. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 3100 Lincoln Drive, Selma Alabama. These residential housing units are “target housing,” as defined at 40 C.F.R. § 745.103.
7. Based on information obtained by EPA on or about April 21, 2009, 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 an EPA-approved lead hazard information pamphlet before the Lessee is obligated under any contract to lease target housing. Respondent failed to provide Lessee an EPA-approved pamphlet in at least three leases.
 - b. 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. Respondent failed to disclose to the Lessee the presence of any known lead-based paint in at least one leases.
 - 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 two leases.
 - d. Pursuant to 40 C.F.R. § 745.107(a)(4), a Lessor shall provide to the Lessee 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 any records or reports in at least one leases.
- e. 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. Respondent failed to include an appropriate statement in at least one leases.
 - f. 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. Respondent failed to include an appropriate statement in at least five leases.
 - g. 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 four leases.
 - h. 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. Respondent failed to include the appropriate information in at least three leases.
 - i. 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 three leases.

- j. 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. Respondent failed to include the appropriate information in at least two leases.
- k. Pursuant to 40 C.F.R. § 745.113(c)(1), a copy of the completed disclosure records for no less than three years from the completion date of the lease. Respondent failed to maintain the appropriate information in at least one lease.

IV. Consent Agreement

- 8. 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.
- 9. 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.
- 10. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
- 11. 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.
- 12. 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.

13. 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

14. Respondent is assessed a civil penalty **Three Thousand Three Hundred Dollars (\$3,300.00)**. Eight 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 ninety (90) day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **Three Thousand Three Hundred, Thirty Seven Dollars and Twenty Cents (\$3,337.20)**. 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 | \$417.15 |
| 2 | within 120 days of date CAFO filed | \$417.15 |
| 3 | within 210 days of date CAFO filed | \$417.15 |
| 4 | within 300 days of date CAFO filed | \$417.15 |
| 5 | within 390 days of date CAFO filed | \$417.15 |
| 6 | within 480 days of date CAFO filed | \$417.15 |
| 7 | within 570 days of date CAFO filed | \$417.15 |
| 8 | within 660 days of date CAFO filed | \$417.15 |

15. Respondent shall remit each 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 each check the

Respondent's name and the Docket Number associated with this CAFO.

Each penalty payment shall be sent by one of the following methods to the address identified for the method chosen:

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 mail service (e.g., Federal Express, United Parcel Service (UPS), DHL, etc.):

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

16. At the time of each payment, Respondent shall send a separate copy of each 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;

Andrea Lippitt
Lead and Children's Health 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.

16. 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.

17. 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.
18. 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 **Three Thousand Three Hundred, Thirty Seven (3,337.20)** 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.
19. 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

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.

20. 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.
21. 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.
22. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
23. This CAFO shall be binding upon the Respondent, its successors and assigns.

24. 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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

VI. Effective Date

25. 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: William O. Byars
Heritage Hills Townhomes
Docket No.: TSCA-04-2011-2531(b)

By: Will Byars Date: 5/1/11
Name: Will Byars
Title: manager

Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Carol G. Kammer for Date: 5/5/11
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 18th day of May, 2011.

By: Susan B. Schub Date: 5/18/11
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 Heritage Hills Apartments, Docket Number: TSCA-04-2011-2531(b), to the addressees listed below:

Mr. William O. Byars (via Certified Mail, Return Receipt Requested)
WB Real Estate, L.L.C.
3512 7th Avenue South
Birmingham, AL 35222

Andrea Price-Lippitt (via EPA's internal mail)
Lead and Children's Health Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

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

By:



Date:

5-18-11

Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street
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 5/16/11
(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

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Heritage Hills Townships
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 3337.29 2 installments
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2011 2531(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) |
|--|---|