



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 04 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. James A. Balli
Sams, Larkin & Huff
376 Powder Springs Street, Suite 100
Marietta, Georgia 30064

SUBJ: Docket No. TSCA-04-2009-2645(b)
Spelman-Hung Capitol, LLC, d/b/a St. Mary's Apartments

Dear Mr. Balli:

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 \$770.00 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 Ms. Lori Weidner, either by telephone at (513) 487-2125, or by written correspondence to her 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 your 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 Securities and Exchange Commission any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannette M. Gettle".

Jeannette M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Spelman-Hung Capitol, LLC)
d/b/a St. Mary's Apartments)
)
Respondent.)
_____)

Docket No. TSCA-04-2009-2645(b)

RECEIVED
EPA REGION IV
2009 SEP -4 PM 3:34
HEAVY OCEAN

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). Respondent is Spelman-Hung Capitol, LLC, d/b/a St. Mary's Apartments.
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 (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 with any rule or order issued under Title X.
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.
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
Atlanta, Georgia 30303-8960
(404) 562-8828.

III. Specific Allegations

7. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 3324 Matilda Lane, Apartment 29, in Columbus, Georgia. This apartment unit is "target housing," as defined at 40 C.F.R. § 745.103.

8. Based on information obtained by EPA on or about August 2, 2007, 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 one lease.
 - 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. Respondent failed to include an appropriate statement in at least one lease.
 - 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. Respondent failed to include an appropriate statement in at least one lease.
 - 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. Respondent failed to include the appropriate information in at least one lease.
 - 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. Respondent failed to include the appropriate information in at least one lease.

- 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. Respondent failed to include the appropriate information in at least one lease.
- 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. 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.
- 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. 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 Respondent's responsibility to comply with said laws and regulations.

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 40 C.F.R. Part 745, Subpart F.

V. Terms of Settlement

15. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), the nature of the alleged violation, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **SEVEN HUNDRED SEVENTY DOLLARS (\$770.00)**.
16. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to the payment of the civil penalty as cited in the foregoing paragraph and to the performance of the SEP set forth herein.
17. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection.
- a. Perform stabilization and abatement of lead-based paint and lead dust identified within the St. Mary's Apartment complex.
 - b. The SEP is more specifically described in the scope of work, attached hereto as Exhibit A and incorporated herein by reference.

18. The total expenditure for the SEP shall not be less than **EIGHT THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$8,680)**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report set forth herein.
19. Respondent shall submit the following reports to EPA regarding the progress and completion of the SEP.
 - a. Respondent shall submit a SEP Completion report to EPA within forty five (45) days after issuance of a clearance letter by the abatement contractor indicating completion of the SEP. The SEP Completion Report shall contain the following information:
 - (i). a detailed description of the SEP as implemented;
 - (ii). An affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete;
 - (iii). Copies of appropriate documentation, including invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
 - b. Respondent agrees that failure to submit the SEP Completion Report required as set herein above shall be deemed in violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 21 below.
 - c. Respondent shall submit all reports required by this CAFO by first class mail or overnight delivery service to the following:

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

20. Respondent's agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
21. If Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 17 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - a. Except as provided in subparagraph (b) immediately below, if the SEP is not completed satisfactorily, Respondent shall pay a stipulated penalty to the United States in the amount of **ELEVEN THOUSAND (\$11,000)**.
 - b. If the SEP is completed satisfactorily, but the EPA determines that the Respondent has made good faith and timely efforts to complete the SEP and has certified with supporting documentation, that at least 90 percent of the minimum amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
 - c. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the minimum amount of money required to be spent for the SEP, Respondent shall not be liable for any stipulated penalty.

- d. If the SEP is satisfactorily completed, but the Respondent spent less than 90 percent of the minimum amount of money required to be spent for the SEP, Respondent shall pay a stipulated penalty of **One Thousand One Hundred (\$1,100)**.
 - e. For failure to timely submit a SEP Completion Report required by paragraph 19(a) above, Respondent shall pay a stipulated penalty in the amount of **One Hundred Dollars (\$100)** for each day the report is late.
 - f. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement and complete the SEP shall be in the sole discretion of EPA.
 - g. Payment of stipulated penalties shall be due not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraphs 25 and 26 below.
22. Respondent certifies that, as of the date this CAFO is signed, Respondent is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that it has not received, and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.
23. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
24. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 409 of the Toxic Substance Control Act, 15 U.S.C. § 2689."

VI. Final Order

25. Respondent is assessed a civil penalty of **SEVEN HUNDRED SEVENTY DOLLARS (\$770.00)** which shall be paid within 30 days from the effective date of this CAFO.
26. Respondent 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.

27. At the time of payment, Respondent shall send a separate copy of the check 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
Management 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.

28. 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.
29. 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.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.
32. 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.

VII. Effective Date

33. 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: SPELMAN-HUNG CAPITOL, LLC, d/b/a ST. MARY'S APARTMENTS
Docket No.: ~~ESCA 04-2009-2645(b)~~

By: [Signature] (Signature) Date: 8-25-09

Name: JEFFREY CHRISTOPHER HUNG (Typed or Printed)

Title: MANAGING MEMBER (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: [Signature] Date: 8/31/09

Carol L. Kemker
Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 3rd day of Sept., 2009.

By: [Signature]
Susan B. Schub
Regional Judicial Officer

Exhibit A



ASBESTOS & MOLD ABATEMENT, DEMOLITION & CONSTRUCTION SERVICES, IAQA CERTIFIED
MOLD INSPECTOR

TELEPHONE: 770-933-0005
FACSIMILE: 770-933-0028

July 29, 2009

Mr. James A. Balli
Sams, Larkin & Huff, LLP
376 Powder Springs Street
Suite 100
Marietta, GA 30064-3448

RE: Proposal for Lead Based Paint Abatement
St. Mary's Apartments, 3324 Matilda Lane, Columbus, GA

Dear Mr. Balli,

Southern Environmental Services, Inc., ("SESI") is pleased to present this proposal for professional lead based paint abatement services in reference to the St. Mary's Apartments located at 3324 Matilda Lane in Columbus, GA. The purpose of this proposal is to outline the proposed activities required to control suspect and / or identified lead contamination within those identified tested and affected areas within the building. All abatement activities will be conducted in strict accordance with all current Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) regulations governing such activities.

Scope of Services: Lead Based Paint Abatement

- | | |
|--|-----------|
| 1. Remove & dispose of LBP exterior soffit/eaves | 790 SF |
| 2. Remove & dispose of LBP exterior metal stairs | 4 SETS EA |

Cost of Services:

This pricing includes all labor, materials, permits, insurance, and all other costs associated with the completion of the project. Based on the efforts involved and the resources required the Scope of Work described can be performed for:

- | | |
|-----------------------|-------------------|
| 1. Mobilization: | \$ 500.00 |
| 2. LBP Abatement: | <u>\$8,180.00</u> |
| PROJECT TOTAL: | \$8,680.00 |

Water (3/4-inch garden hose faucet) and electricity (120 volts @ 20 ampere service) required to complete the Scope of Work are to be provided by the owner.

SESI makes no representations as to the presence of ANY other hazardous materials.

Price quoted is valid for a period of 30-days after the date on this proposal. Payment terms are net 30-days after the receipt of invoice. Late payment is subject to 1.8% interest per month on the unpaid invoice balance.

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: Spelman-Hung Capitol, LLC, d/b/a St. Mary's Apartments Docket Number: TSCA-04-2009-2645(b), to the addressees listed below.

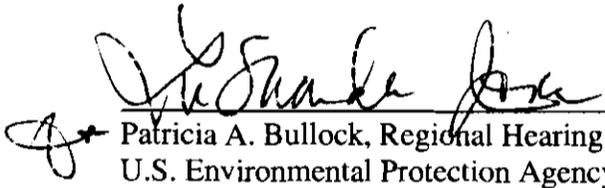
Kevin Woodruff (via EPA's internal mail)
Lead and Children's Health
Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

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

Mr. James A. Balli (via Certified Mail, Return Receipt Requested)
Sams, Larkin & Huff
Suite 100
376 Powder Springs Street
Marietta, GA 30064

2009 SEP -4 PM 3:34
HEARING CLERK
EPA REGION IV

Date: 9/4/09


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 9/11/09
(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: Spelman-Hung Capitol d/b/a St. Mary's Apartments
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 770
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2009 2645(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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |