



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

JUL 21 2008

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Dwight Caldwell
Regional Manager
Hickory Valley Apartments
1507 Hickory Valley Road
Chattanooga, TN 37421

SUBJ: Docket No. TSCA-04-2008-2533(b)
Hickory Valley Apartments

Dear Mr. Caldwell:

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 \$1,806 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.

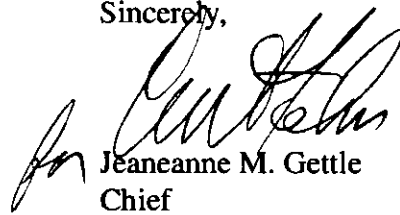
Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Kevin L. Woodruff at (404) 562-8828.

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

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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. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne M. Gettle", is written over the typed name.

Jeanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
 Hickory Valley Apartments)
)
 Respondent)
_____)

Docket Number: TSCA-04-2008-2533(b)

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EPA REGION 4
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DEAN AND CLEM

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 Hickory Valley 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 located at 1507 Hickory Valley Road, Building A #7, Chattanooga, Tennessee 37421. 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 October 25, 2007, relating to Respondent's contracts to lease its target housing described above, EPA alleges that Respondent violated Section 409 of TSCA and the requirements noted in the EPA Notice of Violation. The penalty associated with this action is based on the following regulations:

- 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.

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 otherwise 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 One Thousand Eight Hundred Six Dollars (\$1,806.00). The payment is due within thirty (30) days of the effective date of this CAFO.

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

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 of this CAFO.

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

Kevin Woodruff
Children's Health, Lead &
Asbestos Management Section
U.S. EPA Region 4
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.

17. 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. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of up to six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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:

Kevin Woodruff
Children's Health, Lead &
Asbestos Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8828

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:

French WBS Company, MAITORS

By: **HICKORY VALLEY APARTMENTS - TSCA-04-2008-2533(b)**

By: *[Signature]* AS MANAGEMENT AGENT Date: 6-30-08

Name: *Daniel P. Ford* (Typed or Printed)

Title: SVP (Typed or Printed)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: *Carol G. Kember for* Date: 7/14/08

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 17th day of July, 2008

By: *Susan B. Schub*
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

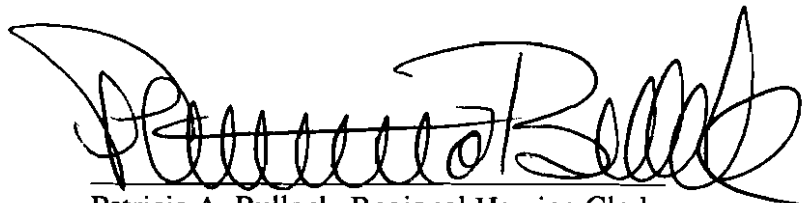
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Hickory Valley Apartments, Docket Number: TSCA-04-2008-2533(b), to the addressees listed below.

Kevin Woodruff (via EPA's internal mail)
Children's Health, Lead &
Asbestos 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. Dwight Caldwell (via Certified Mail, Return Receipt Requested)
Regional Manager
Hickory Valley Apartments
1507 Hickory Valley Road
Chattanooga, TN 37421

Date: 7-27-08



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