



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

**MAY 26 2011**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Joseph Hiden  
Regional Manager  
Engel Realty Company, LLC  
951 8<sup>th</sup> Street South, Ste 100  
Birmingham, Alabama 35216

Re: Vestawood Apartments LLC  
Docket No.: TSCA-04-2011-2532(b)

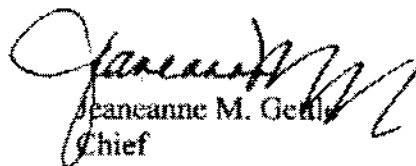
Dear Mr. Hiden:

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 \$2,080 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 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 W. Curtis Richardson at (404) 562-8987.

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,

  
Jeanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

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

**IN THE MATTER OF:** )  
 )  
Vestawood Apartments, LLC )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No.: TSCA-04-2011-2532(b)**

2011 MAY 26 11:10:03  
EPA REGION 4  
ATLANTA

**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 Vestawood Apartments, LLC.
  
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, 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 is \$16,000.
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 is authorized to receive service for EPA in this proceeding:

W. Curtis Richardson  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8987.

### III. Specific Allegations

7. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 1709F Vestawood Courts, Vestavia Hills, Alabama; 1710A Vestawood Courts, Vestavia Hills, Alabama; 1715D Vestawood Courts, Vestavia Hills, Alabama; 1717B Vestawood Courts, Vestavia Hills, Alabama; 1710C Vestawood Courts, Vestavia Hills, Alabama; 1715G Vestawood Courts, Vestavia Hills, Alabama; 1714C Vestawood Courts, Vestavia Hills, Alabama; 1722F Vestawood Courts, Vestavia Hills, Alabama; 1728E Vestawood Courts, Vestavia Hills, Alabama; and 1712A Vestawood Courts, Vestavia Hills, Alabama. These residential housing units are "target housing," as defined at 40 C.F.R. § 745.103.
8. Based on information obtained by EPA on or about January 30, 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. § 745.113(b)(5), failed to include, in the contract as an attachment, 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 ten leases.

#### **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 set forth above.
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. 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.
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 TSCA.

#### **V. Final Order**

15. Respondent is assessed a civil penalty of **TWO THOUSAND AND EIGHTY DOLLARS (\$2,080)** which shall be paid within thirty (30) days of the effective date.
16. Respondent shall remit the 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 the check the Respondent's Name and the Docket Number associated with this CAFO.**

The 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.

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

W. Curtis Richardson  
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.

18. 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 pursuant to this CAFO. Any attempt by Respondent 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 Respondent shall bear their own costs and attorney fees in this matter.
21. This CAFO shall be binding upon the Respondent, its successors and assigns.
22. 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 binds that party to this CAFO.

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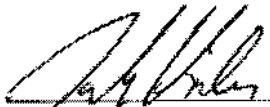


**VI. Effective Date**


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:**

**Respondent:** Vestawood Apartments, LLC  
**Docket No.:** TSCA-04-2011-2532(b)

By:  Date: 5/5/11  
Name: Joseph Hiden  
Title: Regional Manager

**Complainant:** U.S. ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 5/24/11  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

APPROVED AND SO ORDERED this 26<sup>th</sup> day of May, 2011.

By:  Date: 5/24/11  
Susan B. Schub  
Regional Judicial Officer

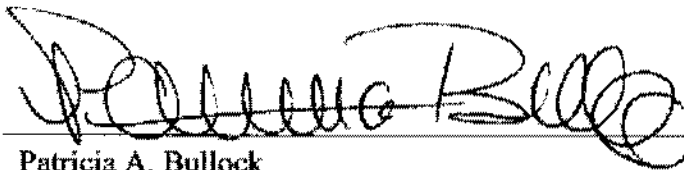
**CERTIFICATE OF SERVICE**

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 Vestawood Apartments LLC, Docket Number: TSCA-04-2011-2532(b), to the addressees listed below.

Mr. Joseph Hiden (via Certified Mail, Return Receipt Requested)  
Regional Manager  
Vestawood Apartments  
1716 Vestawood Court  
Vestavia Hill, Alabama 35216

CDO W. Curtis Richardson (via EPA's internal mail)  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

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

By:  Date: 5-26-11  
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 5/24/11  
(Name) (Date)

in the Region 4, ORC, DEA at (404) 562-9304  
(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

Overnight 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: Vestawood Apartments LLC  
(Name of person and/or Company/Municipality making the payment)

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

The Case Docket Number: TSCA (Y 2011 253216)

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<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>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<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|