



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 11 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kevin S. Hennessy
Shareholder
Lewis, Longman & Walker, P.A.
101 Riverfront Boulevard, Suite 620
Bradenton, Florida 34205

Re: Mr. Emad Alphonse
Ratified Consent Agreement and Final Order
Docket No. TSCA-04-2014-2531(b)

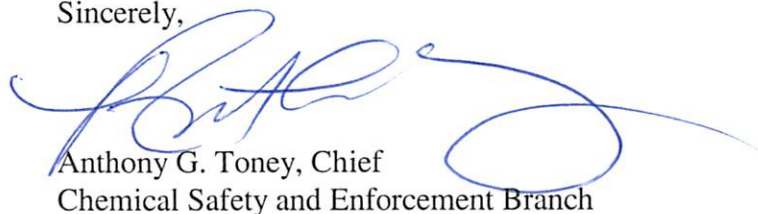
Dear Mr. Hennessy:

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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you or your client have any questions about this matter or your client's compliance status in the future, please contact Mr. Bryce Covington of the U. S. Environmental Protection Agency Region 4 staff at (404) 562-9192 or email covington.bryce@epa.gov.

Sincerely,



Anthony G. Toney, Chief
Chemical Safety and Enforcement Branch

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

2015 JUN 11 PM 1:25

RECEIVED
EPA REGION IV

In the Matter of:)
)
Emad Alphonse) **Docket No.: TSCA-04-2014-2531(b)**
)
Respondent.)
_____)

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. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) is vested in the Administrator of the United States Environmental Protection Agency. The Administrator of the EPA has delegated this authority under TSCA to the Regional Administrator of the EPA Region 4 by the EPA Delegation 12-2-A, dated May 11, 1994. The Regional Administrator of the EPA Region 4 has re-delegated this authority under TSCA to the Director of the Air, Pesticides, and Toxics Management Division, by the EPA Region 4 Delegation 12-2-A, dated January 14, 2009. In accordance with 40 C.F.R. § 22.3(a), the Complainant in this matter is the Director of the Air, Pesticides, and Toxics Management Division. Respondent is Mr. Emad Alphonse, an owner, doing business in the State of Florida.

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 the 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. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, the penalty for each violation of Title X of TSCA shall not exceed \$10,000. The Debt Collection Improvement Act of 1996 requires the 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 of Title X 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. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Bryce Covington
Lead and Children's Health Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9192.

III. Specific Allegations

6. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 104 Atlantic Beach Boulevard, Harbor Beach, Florida. This residential unit is "target housing," as defined at 40 C.F.R. § 745.103.
7. Based on information obtained by the EPA on or about June 18, 2014, relating to Respondent's contracts to lease its target housing described above, the 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)(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 in at least one lease.
 - b. 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.
 - c. 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(s) affirming receipt of the

information. Respondent failed to include the appropriate information in at least one lease.

- d. 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(s) 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

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 the EPA and agrees to pay the civil penalty as set forth in this CAFO.
11. Respondent also is the owner and lessor of other residential “target housing”.
12. Respondent certifies that as of the date of its execution of this CAFO, he is in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart F, for all “target housing” that he owns. Prior to entry into this CAFO, Respondent submitted to EPA copies of disclosure forms provided to tenants for two additional residential properties that he owns that are “target housing” in addition to the property identified in paragraph 6 above that gave rise to this enforcement action (Harbour Beach, Florida). Based upon these documents, EPA determined that Respondent was in compliance for the target housing located at 2700 Highway A1A Unit 13-111, Indialantic, Florida, but not in full compliance for the target housing located at 23 Elton Street, Melbourne, Florida. EPA

notified Respondent of this determination and Respondent took action to return to compliance prior to entry into this CAFO.

13. Compliance with this CAFO shall resolve the allegations of the violations contained herein, and all allegations for violations of the Lead-Based Paint disclosure rules that could have been brought as of the date this CAFO is filed for the two additional target housing properties owned by Respondent as described in paragraph 12. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, or 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 DOLLARS (\$2,000)**, which shall be paid in two equal payments. The first payment will be due within **thirty (30) days** after the effective date of this CAFO (the date that the CAFO is filed) and the second payment will be due thirty (30) days thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **TWO THOUSAND TWENTY DOLLARS (\$2,020.00)**. 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	\$1,010.00
2	Within 60 days of date CAFO filed	\$1,010.00

16. 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 the check the Respondent's Name and the Docket Number TSCA-04-2014-2531(b) associated with this CAFO.

Each penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

U.S. Environmental Protection Agency
 Fines and Penalties
 Cincinnati Finance Center
 P.O. Box 979077
 St. Louis, Missouri 63197-9000.

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
 Government Lockbox 979077
 US EPA Fines & Penalties
 1005 Convention Plaza
 Mail Station SL-MO-C2-GL
 St. Louis, Missouri 63101.

Contact Number: (314) 425-1818.

17. At the time of each 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;

Bryce Covington
Lead and Children's Health Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

18. 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.
19. 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.
20. 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 **TWO THOUSAND DOLLARS (\$2,000)** 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.

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

25. 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.

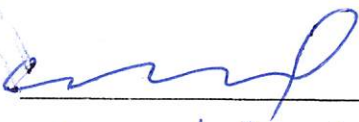
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VI. Effective Date

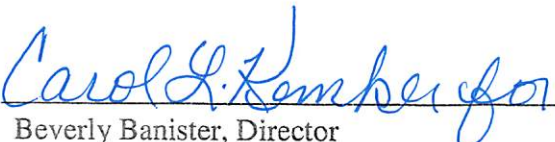
26. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

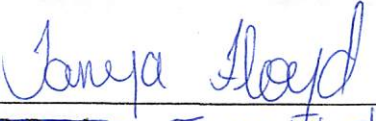
Respondent: Mr. Emad Alphonse
Docket No.: TSCA-04-2014-2531(b)

By:  Date: 7/6/2015
Name: Emad Alphonse
Title: _____

Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 7/23/15
Beverly Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 10th day of August, 2015.

By: 
~~_____~~ Tanya Floyd
~~_____~~ Regional Judicial Officer

CERTIFICATE OF SERVICE

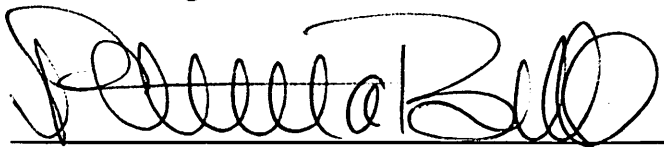
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Mr. Emad Alphonse, Docket Number: TSCA-04-2014-2531(b), to the addressees listed below:

Mr. Emad Alphonse (via Certified Mail, Return Receipt Requested)
Owner
P.O. Box 812
Haymarket, VA 20168-0812

Kevin S. Hennessy (via Certified Mail, Return Receipt Requested)
Executive Shareholder
Bradenton Office
Lewis, Longman & Walker, P.A.
101 Riverfront Boulevard, Suite 620
Bradenton, Florida 34205

Bryce Covington (via EPA's internal mail)
Lead and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

Robert Caplan (via EPA's internal mail)
Senior Attorney
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
(404) 562-9511

Date: 8-11-15