



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 23 2009

4APT-PTSB

Certified Mail – Return Receipt Requested

Ms. Rebecca A. Davis
Seyfarth and Shaw, LLP
1545 Peachtree Street, N.E., Suite 700
Atlanta, Georgia 30309-2401

SUBJ: Docket No. TSCA-04-2009-2629(b)
Highland Glen Apartments

Dear Ms. Davis:

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 \$607.42 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:)
)
Miles-Northlake, LLC)
d/b/a Highland Glen Apartments)
)
Respondent.)
_____)

Docket No. TSCA-04-2009-2629(b)

RECEIVED
EPA REGION IV
2009 JUN 23 AM 8:15
RECORDING CLERK

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 Miles-Northlake, LLC d/b/a Highland Glen 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. 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, as amended, 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.
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:

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

6. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 3535 Lawrenceville Highway #1J07, Tucker, Georgia 30084; 3535 Lawrenceville Highway #1F05, Tucker, Georgia 30084; 3535 Lawrenceville Highway #1J12, Tucker, Georgia 30084; 3535 Lawrenceville Highway #2B17; 3535 Lawrenceville Highway

#1E05, Tucker, Georgia 30084; 3535 Lawrenceville Highway #2B01, Tucker, Georgia 30084; 3535 Lawrenceville Highway #1M01, Tucker, Georgia 30084; 3535 Lawrenceville Highway #1G02, Tucker, Georgia 30084; and 3535 Lawrenceville Highway #2D04, Tucker, Georgia 30084. These residential housings are “target housing,” as defined at 40 C.F.R. § 745.103.

7. Based on information obtained by EPA on or about July 17, 2006, 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)(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 nine leases.
 - b. 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 to provide to the Lessee any records or reports in at least nine leases.
 - c. 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 nine leases.
 - d. 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 referenced in paragraph d above. Respondent failed to include the appropriate information in at least nine leases.

- e. 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 nine leases.

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.
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. 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.

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

V. Terms of Settlement

14. 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 **Six Hundred Seven Dollars and Forty Two Cents** (\$607.42).
15. 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.
16. 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 leased. At the time the violations listed in paragraph 7 above were identified by EPA, Respondent asserts that they had no knowledge of the presence of any lead-based paint and/or lead-based paint hazards in its target housing identified in paragraph 6.
17. Respondent, as of the date of this CAFO, has completed the following Environmental Quality Assessment SEP which the parties agree was intended to reduce risks to public health and the environment due to exposure to lead by identifying lead-based paint and/or lead-based paint hazards in its target housing.
- a. Respondent conducted a lead-based paint inspection and a lead-based paint risk assessment of its target housing to identify lead-based paint and/or lead-based

paint hazards.

- b. Respondent initiated the lead-based paint inspection and lead-based paint risk assessment of its target housing. The activities began after the commencement of settlement meetings with EPA concerning alleged violations of the lead-based paint disclosure rule (40 C.F.R. Part 745 Subpart F) associated with target housing as identified in paragraph 6.
 - c. Based on the information provided in Respondent's SEP Completion Report, as identified in paragraph 17.d. below, the lead-based paint inspection and lead-based paint risk assessment of Respondent's target housing was conducted in compliance with the applicable requirement of 40 C.F.R. § 745.227.
 - d. Respondent's certified lead-based paint inspector/lead-based paint risk assessor, after conducting the lead-based paint inspection and lead-based paint risk assessment, determined Respondent's target housing to be lead-based paint free.
 - e. Respondent expended \$7,500.00 in completing the SEP.
 - f. Respondent submitted a SEP Completion Report within 10 days of the completion of the SEP to the following:

Kevin Woodruff
Lead and Children's Health Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303.
 - g. Respondent's SEP Completion Report included an EPA certified lead-based paint inspection report.
 - h. Respondent has satisfactorily completed the agreed upon Assessment SEP.
18. 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.

19. 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.
20. 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

21. Respondent is assessed a civil penalty of **SIX HUNDRED SEVEN DOLLARS and FORTY TWO CENTS (\$607.42)** which shall be paid within 30 days from the effective date of this CAFO.
22. 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.

23. 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 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.

24. 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.
25. 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.
26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon the Respondent, its successors and assigns.

VII. Effective Date

29. 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: MILES-NORTHLAKE, LLC d/b/a HIGHLAND GLEN APARTMENTS

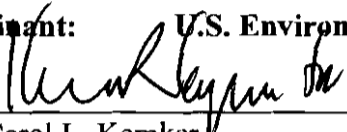
Docket No.: TSCA-04-2009-2629(b)

By:  (Signature) Date: 05/27/09

Name: DANIEL J. MILES (Typed or Printed)


Title: PRESIDENT (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 6/15/09

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

APPROVED AND SO ORDERED this 22nd day of June, 2009.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

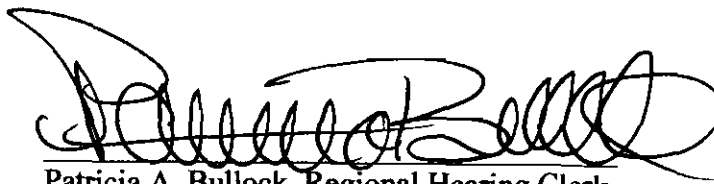
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Highland Glen Apartments, Docket Number: TSCA-04-2009-2629(b), to the addressees listed below.

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

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

Ms. Rebecca A. Davis (via Certified Mail, Return Receipt Requested)
Seyfarth and Shaw, LLP
One Peachtree Pointe
1545 Peachtree Street, N.E.
Suite 700
Atlanta, Georgia 30309-2401

Date: 6-23-09


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 6/17/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9904
(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

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Miles-Northlake LLC d/b/a Highland Glen Apartments
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 607.42
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2009 2629(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) |
|--|---|