



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

SEP 11 2008

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Harold Lomenick  
The Lomenacque Apartments  
4145 Ringgold Road  
Chattanooga, TN 37412

SUBJ: Docket No. TSCA-04-2008-2544(b)  
The Lomenacque Apartments

Dear Mr. Lomenick:

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.

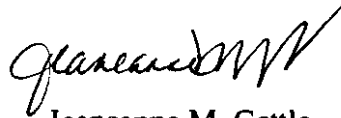
As stated in Section V of the CAFO, the assessed penalty of \$212.00 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

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 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.

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 "Jeaneanne M. Gettle". The signature is fluid and cursive, with a prominent initial "J" and "M".

Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
The Lomenacque Apartments )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2008-2544(b)

TRAINING CLERK

2008 SEP 11 PM 3:57

RECEIVED  
EPA REGION IV

**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 The Lomenacque 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  
Children's Health, Lead and Asbestos  
Management 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 13B 4145 Ringgold Road, Chattanooga, Tennessee 37412; 14B 4145 Ringgold Road, Chattanooga, Tennessee 37412; 15B 4145 Ringgold Road, Chattanooga, Tennessee

37412 and 16B 4145 Ringgold Road, Chattanooga, Tennessee 37412.

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 October 23, 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 Purchaser is obligated under any contract to Purchase target housing. Respondent failed to provide Lessee an EPA-approved pamphlet in at least four leases.
  - 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 four leases.
  - 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 four leases.
  - 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 four leases.

- 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 four leases.
- 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 four leases.
- 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 four 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 Two Hundred Twelve Dollars (\$212.00).
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. Respondent at the time the violations listed in paragraph 7 above were identified by EPA, Respondent 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 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 its 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, 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 \$7,185.00 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  
Children's Health, Lead &  
Asbestos Management 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 TWO HUNDRED TWELVE DOLLARS (\$212.00) 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  
Children's Health, Lead &  
Asbestos 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.

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.
28. 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**

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:** THE LOMENACQUE APARTMENTS

**Docket No.:** TSCA-04-2008-2544(b)

By:  (Signature) Date: Aug 26, 2008

Name: Loren H. Lomenick (Typed or Printed)

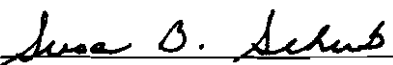
Title: General Manager (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 9/8/08

Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 10<sup>th</sup> day of Sept., 2008.

By: 

Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

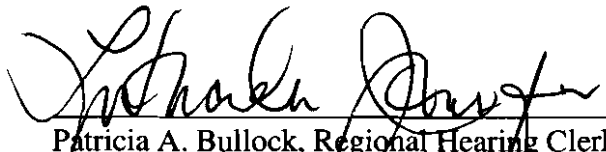
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: The Lomenacque Apartments, Docket Number: TSCA-04-2008-2544(b), 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. Harold Lomenick (via Certified Mail, Return Receipt Requested)  
Owner  
The Lomenacque Apartments  
4145 Ringgold Road  
Chattanooga, TN 37412

Date: 9/11/09

  
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

## **Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings**

Securities and Exchange Commission Regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) require disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K, or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceeding to the SEC. This notice does not create, modify, or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by government authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel of the SEC's Division of Corporation Finance. The phone number is (202) 551-3500.

**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 9-9-08  
(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

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Lomenicque Apartments / Harold Lomenick  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 212  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: 4 SCA 04 2008 2544(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<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)  |
|  | 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)    |