



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 25 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Wayne Barbour
Owner
Ellis Barbour & Sons, Inc.
1302 West Cumberland Street
Dunn, North Carolina 28335

Re: Ellis Barbour & Sons, Inc.
Ratified Consent Agreement and Final Order
Docket No. TSCA-04-2018-2529(b)

Dear Mr. Barbour:

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief

Chemical Safety & Enforcement Branch

Enclosure

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

In the Matter of:)
)
Ellis Barbour & Sons, Inc.)
)
Respondent.)
_____)

Docket No.: TSCA-04-2018-2529(b)

**USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL
2018 SEP 25 AM 10:00
HEARING 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. 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 Ellis Barbour & Sons, Inc., doing business in the State of North Carolina.
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. § 4852, 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. Persons who violate Title X are subject to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. Part 19.

III. Specific Allegations

5. Respondent is a Seller, as defined at 40 C.F.R. § 745.103, of a residential house located at 302 North 10th Street, Erwin, North Carolina 28339. This residential unit is “target housing,” as defined at 40 C.F.R. § 745.103.
6. Based on information obtained by the EPA on or about July 5, 2018, relating to Respondent’s contract to sell 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. Respondent failed to permit the purchaser a 10-day period to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards or to obtain the purchaser’s waiver of such opportunity in writing pursuant to 40 C.F.R. § 745.110(a); and

- b. Respondent failed to include, as an attachment to a contract to purchase target housing, a statement by the purchaser affirming receipt of the information required by 40 C.F.R. §§ 745.113(a)(2) and (a)(3) and the lead hazard pamphlet as specified in 40 C.F.R. § 745.113(a)(4).

IV. Consent Agreement

7. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to quickly 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.
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 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. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations of violation in Section III of this CAFO. 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

regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

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 TSCA.

V. Final Order

14. Respondent is assessed a civil penalty of **ONE-THOUSAND, FOUR-HUNDRED, TWENTY-EIGHT DOLLARS (\$1,428)** which shall be paid within thirty (30) days after the effective date of this CAFO.
15. 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 TSCA-04-2018-2529(b).**

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

Address for payment submittal using the United States Postal Service (USPS) (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 payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

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

Contact Phone Number: (314) 425-1819

16. 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, SW
Atlanta, Georgia 30303-8960

Bryce Covington
Lead and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

17. 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.
18. Pursuant to 31 U.S.C. § 3717, the 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 30 days of the due date.
19. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
20. This CAFO shall be binding upon the Respondent, its successors and assigns.
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 binds that party to this CAFO.

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:

Respondent: Ellis Barbour & Sons, Inc.

Docket No.: TSCA-04-2018-2529(b)

By: Wayne T Barbour (Signed) Date: 9-5-18
Name: WAYNE T BARBOUR (Typed or Printed)
Title: OWNER (Typed or Printed)

Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Beverly H. Banister for Date: 9/20/18
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 24th day of September, 2018

By: Tanya Floyd
Tanya Floyd
Regional Judicial Officer

9-2-9

Wm. J. ...
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Wm. J. ...
...

Wm. J. ...

Wm. J. ...
...

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 Ellis Barbour & Sons, Inc., TSCA-04-2018-2529(b), to the addressees listed below:

Wayne Barbour
Ellis Barbour & Sons, Inc.
1302 West Cumberland Street
Dunn, North Carolina 28335

(via Certified Mail, Return Receipt Requested)

Bryce Covington
Lead and Asbestos Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(via EPA's internal mail)

Robert Caplan, Senior Attorney
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(via EPA's internal mail)



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

Date: 9-25-18