



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

APR 08 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matthew Glazier, Esq.
535 Fifth Avenue
New York, New York 10017

Re: Brookside West, LLC
Docket No. TSCA-04-2010-2715(b)

Dear Mr. Glazier:

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, with respect to payment of the assessed penalty, the first payment of \$1,645.86 is due within 30 days from the effective date. Please ensure that the face of Brookside West, LLC 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 Brookside West, LLC have any questions about this matter or their 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 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

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

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EPA REGION 4
2010 APR -6 AM 9:02

In the Matter of:)
)
Brookside West, LLC) Docket No. TSCA-04-2010-2715(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. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Brookside West, 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.

Brookside West, LLC
Docket No. TSCA-04-2010-2715(b)

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 (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 with 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 that Act, 15 U.S.C. 2615, shall not be more than \$10,000, pursuant to Title X, 42 U.S.C. § 4852d(b)(5) Title X. For each violation occurring after January 31, 1997, a penalty of up to \$11,000 may be assessed pursuant to 40 C.F.R. Part 19.
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 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, SW
Atlanta, GA 30303-8960
(404) 562-8828.

III. Specific Allegations

7. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 2410 Chapman Court, Augusta, Georgia; 2567 Quebec Court, Augusta, Georgia; and 2550 Yorkshire Drive, Augusta, Georgia. These residential housings are "target housing," as defined at 40 C.F.R. § 745.103.
8. Based on information obtained by EPA on or about February 15, 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)(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 three 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 the Lessee any records or reports in at least three 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 three 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. Respondent failed to include the appropriate information in at least three leases.
- e. 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 three 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. 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.
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 40 C.F.R. Part 745, Subpart F.

V. Final Order

15. Respondent is assessed a civil penalty of **THIRTEEN THOUSAND TWENTY DOLLARS AND NO CENTS (\$13,020.00)**, which is to be paid in eight quarterly payments, over two years. The first payment is due within thirty (30) days of the effective date of this CAFO and subsequent payments are due in three month intervals thereafter. The total penalty amount to be paid, including interest, is **THIRTEEN THOUSAND ONE HUNDRED SIXTY-SIX DOLLARS AND EIGHTY-EIGHT CENTS (\$13,166.88)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Due</u>
Within 30 days of filing CAFO	\$1,645.86
Within 120 days of filing CAFO	\$1,645.86
Within 210 days of filing CAFO	\$1,645.86
Within 300 days of filing CAFO	\$1,645.86
Within 390 days of filing CAFO	\$1,645.86
Within 480 days of filing CAFO	\$1,645.86

Within 570 days of filing CAFO	\$1,645.86
Within 660 days of filing CAFO	\$1,645.86

16. 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.

17. At the time of payment, Respondent shall send a separate copy of the check or wire transfer 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, SW
Atlanta, GA 30303-8960;

Kevin L. Woodruff
Lead and Children's
Health Section
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960;

and,

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, SW
Atlanta, GA 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 made 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. 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.

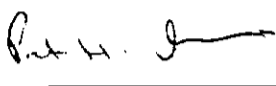
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VI. Effective Date

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:

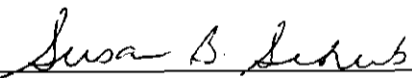
Respondent: BROOKSIDE WEST, LLC
Docket No.: TSCA-04-2010-2715(b)

By:  (Signature) Date: 3/25/10
Name: ~~Paul H. J. [unclear]~~ Paul H. J. [unclear] (Typed or Printed)
Title: Owner (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 3/31/10
Kenneth R. Lapiere, Acting Director
Air, Pesticides and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960

APPROVED AND SO ORDERED this 2nd day of April, 2010.

By: 
Susan B. Schub
Regional Judicial Officer

foregoing Consent Agreement and Final Order, in the Matter of: Brookside West, LLC, Docket

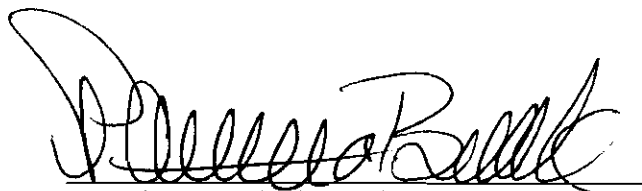
Number: TSCA-04-2010-2715(b), to the addressees listed below:

Kevin L. Woodruff (via EPA's internal mail)
Lead and Children's
Health 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

Mathew P. Glazier, esq. (via Certified Mail, Return Receipt Requested)
535 Fifth Avenue
New York, NY 10017

Date: 4-6-10



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 4/2/10
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Brookside West LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 13020
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: YSCA 04 2010 2715 (6)

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) |
|--|---|