

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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In the Matter of :  
 :  
**Halston Builders Associates – Delaware Heights,** :  
 :  
 :  
 Respondent. :  
 :  
 :  
 Proceeding under Section 16(a) of :  
 the Toxic Substances Control Act. :  
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**CONSENT AGREEMENT AND  
FINAL ORDER**

Docket No.  
TSCA-02-2009-9167

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 JAN 13 PM 12:44  
REGIONAL HEARING  
CLERK

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a). The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 C.F.R. Part 22 (July 1, 2000)), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F. R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”), alleges that Halston Builders Associates – Delaware Heights, located at 165 Capricorn Drive #15, Hillsborough, NJ 08844, (Respondent), violated the requirements of § 409 of TSCA, (15 U.S.C. § 2689) and the regulations promulgated pursuant to the Section, codified at 40 C.F.R. Part 745.

Under § 409 of TSCA and 40 C.F.R. 745.113, before a lessee is obligated to a lease, the lessor must provide a lead warning statement, a statement disclosing any knowledge of lead-based paint, and a list of any existing records or reports pertaining to lead-based paint; and must obtain verification of the receipt of information by the lessees, and signatures and the dates of signature of the lessors, agents, or lessees certifying to the accuracy of their statements.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. Section 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation, and to that end the parties conducted a series of informal settlement conferences by phone and in person, commencing April 29, 2008. This CA/FO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitute Complainant’s Findings of Fact and Conclusions of Law based upon information EPA had obtained through October 2, 2008.

### **FACTUAL ALLEGATIONS**

1. Respondent is Halston Builders Associates – Delaware Heights.
2. Respondent’s place of business is 165 Capricorn Drive #15, Hillsborough, NJ 08844.
3. At all times relevant hereto, Respondent was the “lessor,” as that term is defined in 40 C.F.R. § 745.103, of the property known as Delaware Heights Apartments and located at 2201 Scenic Drive, Ewing, NJ 08628, which is the subject of this Consent Agreement and Final Order (hereinafter, “Delaware Heights”).

4. Delaware Heights is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24), that was constructed in 1970 and 1971.

5. Delaware Heights consists of approximately 352 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.

6. Delaware Heights is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103.

7. Respondent is subject to the regulations and requirements pertaining to Lead-Based Paint Disclosure promulgated pursuant to 42 U.S.C. § 4852d, and set forth at 40 C.F.R. Part 745, Subpart F.

8. During at least the years 2005, 2007 and 2008, Respondent acted as lessor in leasing numerous target housing units at Delaware Heights, without providing a lead warning statement; a statement disclosing any knowledge of lead-based paint or a list of any existing records or reports pertaining to lead-based paint; and without obtaining verification of the receipt of information by the lessees, or signatures and the dates of signature of the lessors, agents, or lessees certifying to the accuracy of their statements.

9. Respondent’s failures to provide or obtain the lead-based paint disclosure components identified in Paragraph 8, above, constitute failures to comply with 40 C.F.R. part 745, which are violations of 42 U.S.C. § 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689.

10. Subsequent to EPA’s records inspection, Respondent obtained lead-based paint free certification for Delaware Heights from Greentree Consulting, Inc. of Hightstown, NJ.

## CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed and accepted by Respondent, that it shall hereafter the date of execution of this Consent Agreement comply with the following terms:

1. Respondent shall comply with the applicable requirements of TSCA, and its implementing regulations set forth at 40 C.F.R. Part 745, Subpart F, with respect to all target housing it leases, sells, or for which it acts as an agent in a lease or sale.
2. For the purposes of this proceeding, Respondent: (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) to commence a civil administrative proceeding for the violations alleged in the Factual Allegations section, above; and (b) neither admits nor denies the specific factual allegations in the Factual Allegations section, above.
3. Respondent shall pay a civil penalty to EPA in the total amount of Three Thousand Four Hundred Fifty Dollars (\$3,450). Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon: **In the Matter of Halston Builders Associates – Delaware Heights**, and shall bear thereon the Docket Number **TSCA-02-2009-9167**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read “ D68010727 Environmental Protection Agency.”
- 6) Name of Respondent: Halston Builders Associates – Delaware Heights.
- 7) Case Number: TSCA-02-2009-9167.

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to:

Laura J. Livingston  
Lead Team, MS-225  
Pesticides and Toxic Substances Branch  
US Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue  
Edison, New Jersey 08837

and

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO and shall hereafter be referred to as “due date”. Payment which is untimely or not made is subject to the following penalties:

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Furthermore, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant

to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- d. The effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

4. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of any equipment, technology or structure installed or constructed by Respondent under the terms of this Agreement.

5. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's certifications in this proceeding) the civil and administrative claims alleged in the Factual Allegations section, above. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Factual Allegations asserted herein, or on the accompanying Final Order.

8. Full payment of the penalty in a settlement pursuant to 40 C.F.R. § 22.18(b) shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Factual Allegations section, above.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.


12. Each party hereto agrees to bear its own costs and fees in this matter.

13. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**In the Matter of Halston Builders Associates – Delaware Heights**  
**Docket No. TSCA-02-2009-9167**

RESPONDENT:

**Halston Builders Associates – Delaware Heights**

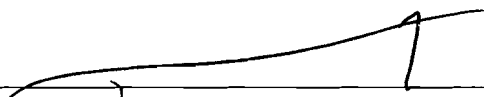
BY:   
(Authorized Signature)

NAME: YACOV HAREL PRAG  
(PLEASE PRINT)

TITLE: Manager

DATE: 12-16-08

COMPLAINANT:

 P. LaPosta  
**Dore LaPosta, Director**  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007

DATE: December 24, 2008



**In the Matter of Halston Builders Associates – Delaware Heights  
Docket No. TSCA-02-2009-9167**

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 16(a) of the Toxic Substances Control Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

**Alan J. Steinberg**  
Regional Administrator  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007

DATE: Alan J. Steinberg 12/30/08

**In the Matter of Halston Builders Associates – Delaware Heights  
Docket No. TSCA-02-2009-9167**

**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by Interoffice Mail:

Office of the Regional Hearing Clerk  
U.S. EPA- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Mr. Harel Prag  
Halston Builders Associates – Delaware Heights  
165 Capricorn Drive #15  
Hillsborough, NJ 08844

Dated: January 9, 2009  
Edison, New Jersey

*Aura Livingston*