



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

**MAR 29 2011.**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. William Logan  
Westlake Lodge Apartments  
306 Westlake Circle  
Bessemer, Alabama 35020

Re: 306 Westlake Circle  
Docket No.: TSCA-04-2011-2517(b)

Dear Mr. Logan:

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 \$7,245 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 Mr. Bryson Lehman either by telephone at (513) 487-2123 or by written correspondence to his 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 their compliance status in the future, please call me at (404) 562-8979 or W. Curtis Richardson at (404) 562-8987.

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,

A handwritten signature in black ink, appearing to read "Jeanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and "G".

Jeanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

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

**IN THE MATTER OF:** )  
 )  
Westlake Lodge Apartments, )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No.:** TSCA-04-2011-2517(b)

RECEIVED  
EPA REGION 4  
ATLANTA, GA  
JUN 14 2011

**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 Westlake Lodge 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. § 4852(d), 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. § 2689, 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. For purposes of enforcing Title X under TSCA, the penalty for each violation applicable under Section 16 of TSCA, 15 U.S.C. § 2615, shall not be more than \$10,000. The Debt Collection Improvement Act of 1996 requires EPA to review and adjust penalties, as necessary, for inflation at least once every four years. As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the revised maximum penalty for each violation occurring after January 30, 1997, through January 12, 2009, is \$11,000 and for each violation occurring after January 12, 2009, the maximum penalty for each violation is \$16,000.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

W. Curtis Richardson  
Lead and Children's Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8987.

### **III. Specific Allegations**

6. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 306 Westlake Circle Bessemer, Alabama. These residential housing units are "target housing," as defined at 40 C.F.R. § 745.103.
7. Based on information obtained by EPA on or about February 18, 2009, 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 Lessee is obligated under any contract to lease target housing. Respondent failed to provide Lessee an EPA-approved pamphlet in at least three leases.
  - b. 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. Respondent failed to disclose to the Lessee the presence of any known lead-based paint in at least one leases.
  - c. 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 two leases.
  - d. 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 provide to the Lessee any records or reports in at least one leases.

- e. 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 one leases.
- f. 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 five leases.
- g. 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.
- h. 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.
- i. 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.
- j. 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 two leases.
- k. Pursuant to 40 C.F.R. § 745.113(c)(1), a copy of the completed disclosure records for no less than three years from the completion date of the lease. Respondent failed to maintain the appropriate information in at least one lease.

#### **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 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 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. Final Order**

14. Respondent is assessed a civil penalty of **SEVEN THOUSAND TWO HUNDRED AND FORTY FIVE DOLLARS** (\$7245), which shall be paid within thirty (30) calendar days of the effective date of this CAFO.
15. 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.**

16. 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  
Atlanta, Georgia 30303-8960;



W. Curtis Richardson  
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.


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 made 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, 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.
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 to legally bind that party to this CAFO.

Effective Date

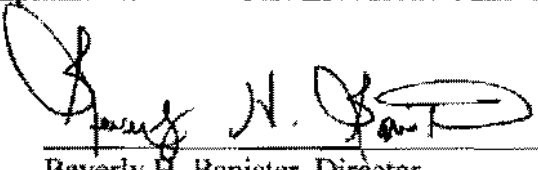
22. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**


**Respondent:** Westlake Lodge Apartments  
**Docket No.:** TSCA-04-2011-2517(b)

By:  (Signature) Date: 2-16-2011  
Name: WILLIAM F. LOBAN (Typed or Printed)  
Title: Managing Member (Typed or Printed)

**Complainant:** U.S. ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 3/18/11  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 24<sup>th</sup> day of March, 2011.

By:   
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

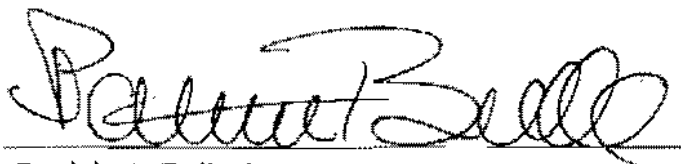
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Westlake Lodge Apartments, Docket Number: TSCA-04-2011-2517(b), to the addressees listed below.

William Logan (via Certified Mail, Return Receipt Requested)  
Managing Member  
Westlake Lodge Apartments  
306 Westlake Circle  
Bessemer, Alabama 35020

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

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

By:



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, GA 30303  
(404) 562-9511

Date:

3-29-11

**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 3/23/10  
(Name) (Date)

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

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS      | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>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: Nestlake Ledge Apartments  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7245  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 14 2611 2517 (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<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20644 | 2. Originating Office (EAD)<br>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<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|