

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

In the Matter of:)	
)	
Falconite Development Group)	Docket No.: TSCA-04-2020-3103(b)
)	
Respondent.)	
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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 U.S. Environmental Protection Agency. Complainant is the Administrator of the EPA. On the EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent is Falconite Development Group, a company doing business in the Commonwealth of Kentucky.
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. § 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.

III. Specific Allegations

4. During 2017, Respondent was a Lessor, as defined at 40 C.F.R. § 745.103, of Hillcrest Apartments and Fairlawn Apartments, apartment complexes that are residential housing, located at 3501 Buckner Lane, Paducah, Kentucky and 2919 Jefferson Street, Paducah, Kentucky, respectively. These residential units are “target housing,” as defined at 40 C.F.R. § 745.103.
5. Based on information obtained by the EPA on or about December 12, 2018, including Respondent’s contracts to lease the apartments described above, the EPA alleges that Respondent violated Section 409 of TSCA and 40 C.F.R. Part 745, Subpart F as follows:
At the Hillcrest Apartments, 3501 Buckner Lane, Apartment H-2, Paducah, Kentucky; Lease dated May 4, 2017:
 - a. Respondent failed to disclose to the Lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, pursuant to 40 C.F.R. § 745.107(a)(2);
 - b. Respondent failed to include, as an attachment or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards, pursuant to 40 C.F.R. § 745.113(b)(2);
 - c. Respondent failed to include, as an attachment or within the contract, a statement by the Lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or

indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards, pursuant to 40 C.F.R. § 745.113(b)(2); and

- d. Respondent failed to include, in the contract as an attachment, 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, pursuant to 40 C.F.R. § 745.113(b)(5).

At the Fairlawn Apartments, 2919 Jefferson Street, Apartment #1, Paducah, Kentucky; Lease dated March 3, 2017:

- a. Respondent failed to include in the contract for lease a statement by the Lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard pamphlet required under 15 U.S.C. § 2696, as specified in 40 C.F.R. § 745.113(b)(4); and
- b. Respondent failed to include, in the contract as an attachment, 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, pursuant to 40 C.F.R. § 745.113(b)(5).

IV. Consent Agreement

6. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the allegations of violation set forth in Section III.
7. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the Final Order accompanying the Consent Agreement.
8. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in the Final Order section of this CAFO.
9. 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.

10. 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 bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

V. Final Order

11. Respondent is assessed a civil penalty of **FOUR-THOUSAND, EIGHT-HUNDRED, SIXTY DOLLARS (\$4,860)** which shall be paid within thirty (30) days after the effective date of this CAFO.
12. 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-04-2020-3103(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

13. 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

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

14. 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.
15. 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.
16. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
17. This CAFO shall be binding upon the Respondent, its successors and assigns.
18. 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

19. 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: Falconite Development Company

Docket No.: TSCA-04-2020-3103(b)

By: Angela Turner (Signed) Date: 3-2020

Name: Angela Turner (Typed or Printed)

Title: Vice President (Typed or Printed)

Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____
Carol L. Kemker
Director
Enforcement and Compliance Assurance Division

APPROVED AND SO ORDERED this _____ day of _____, 20__.

By: _____
Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of Falconite Development Group, Docket No. TSCA-04-2020-3103(b), were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties:

To Respondent: Angela Turner, angela@falconitedevelopment.com

To EPA: Bryce Covington, Case Development Officer, covington.bryce@epa.gov,
and Robert Caplan, Associate Regional Counsel, caplan.robert@epa.gov

DATE

Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960