



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

JUN 24 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David J. Monz
Attorney at Law
Updike, Kelly & Spellacy, P.C.
One Century Tower
265 Church Street
New Haven, Connecticut 06510

Re: MW Group LLC
Ratified Consent Agreement and Final Order
Docket No. TSCA-04-2012-2619(b)

Dear Mr. Monz:

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 inform your client that payment is required in accordance with Section V of the CAFO and the penalty information along with payment instructions are listed there.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions about this matter or the company's compliance status in the future, please contact Mr. Elmore Johnson of the EPA Region 4 staff at (404) 562-9787 or johnson.elmore@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "ATN M SM for".

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
MW Group LLC)
)
Respondent.)
_____)

Docket No.: TSCA-04-2012-2619

HEARING CLERK

2014 JUN 24 AM 9:20

RECEIVED
EPA REGION IV

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, U. S. Environmental Protection Agency, Region 4. Respondent is MW Group 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.

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.
4. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, the penalty for each violation of Title X of TSCA shall not exceed \$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 of Title X occurring after January 30, 1997, through January 12, 2009, is \$11,000 and for each violation occurring after January 12, 2009, the maximum penalty is \$16,000.
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 is authorized to receive service for EPA in this proceeding:

Mr. Elmore Johnson
Lead and Children's Health Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9787

III. Specific Allegations

7. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 2814 Marlowe Avenue, Charlotte North Carolina. These residential units are "target housing," as defined at 40 C.F.R. § 745.103.
8. Based on information obtained during an EPA inspection conducted on or about February 7, 2011, relating to Respondent's contracts to lease its target housing described in paragraph 7, above, EPA alleges that, prior to February 7, 2011, 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(s) an EPA-approved lead hazard information pamphlet before the Lessee(s) is obligated under any contract to lease target housing. Respondent failed to provide Lessee(s) with an EPA-approved pamphlet in at least one lease.
 - b. Pursuant to 40 C.F.R. § 745.107(a)(2), a Lessor shall disclose to the Lessee(s) 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(s) the presence of any known lead-based paint in at least one lease.
 - 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 one lease.
- d. Pursuant to 40 C.F.R. § 745.107(a)(4), a Lessor shall provide to the Lessee(s) 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(s) any records or reports in at least one lease.
 - 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 lease.
 - 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 leased, 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 one lease.
 - 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 one lease.

- 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(s) affirming receipt of the information. Respondent failed to include the appropriate information in at least one lease.
- i. 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(s) certifying to the accuracy of their statements, as well as dates. Respondent failed to include the appropriate information in at least one lease.
- j. Pursuant to 40 C.F.R. § 745.113(c)(1), a Lessor shall retain a copy of the completed disclosure records for no less than three years from the completion date of the lease. Respondent failed to retain a copy of the completed disclosure records for at least one lease.

IV. Respondent's Chapter 11 Bankruptcy Case

- 9. On October 21, 2011, Respondent filed a voluntary petition under chapter 11 of title 11 of the United States Code (U.S.C.) with the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division (the Bankruptcy Court). The petition is being administered under Case No. 11-32674.
- 10. The U.S. Department of Justice filed a proof of claim on behalf of the Complainant on April 18, 2012. Pursuant to 11 U.S.C. § 502(a) and Rule 3002 of the Federal Rule of Bankruptcy Procedure, a proof of claim filed by a governmental entity is timely filed not later than 180 days after the date of the order for relief.
- 11. The Respondent and Bank of America, N.A. (Respondent's mortgagee) filed a joint reorganization plan (the Plan) on May 2, 2014. The Bankruptcy court scheduled a

confirmation hearing on May 30, 2014 for the Plan. Respondent anticipates that the Plan became effective on or before June 6, 2014. Once effective, the Plan authorizes the Respondent to execute this CAFO without further approval from the bankruptcy court.

V. Consent Agreement

12. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above but neither admits nor denies the factual allegations set out above.
13. 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.
14. Respondent consents to the terms and issuance of this CAFO, and agrees to the payment of the civil penalty as set forth in this CAFO.
15. 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.
16. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive 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.
17. 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.

VI. Final Order

18. Respondent is shall pay a civil penalty in the amount of **FOUR THOUSAND DOLLARS (\$4,000.00) which shall be paid within thirty (30) days after the effective date of this CAFO.**
19. Respondent shall remit the payment referenced above in paragraph 18, 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 associated with this CAFO.

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

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

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

Contact Number: (314) 425-1818.

20. 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
Atlanta, Georgia 30303-8960;

Elmore Johnson
Lead and Children's Health Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

21. 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.

VII. Supplemental Environmental Project

22. In addition to the above civil penalty, Respondent agrees to undertake and complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to eliminate a potential source of lead-based hazard. Within ninety (90) days of the Effective Date of the Plan, Respondent shall replace forty eight (48) existing wooden exterior doors with new, lead-free energy-star rated metal doors at the residential housing units at the Marlborough Woods Condominium Association located in Charlotte, North Carolina.
23. Respondent shall expend not less than THIRTY SIX THOUSAND DOLLARS in (\$36,000), accordance with the cost estimate provided by Respondent.
24. Respondent certifies that it is not a party to any open federal financial assistance

transaction that is funding or could be used to fund the same activity as the SEP.

Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

25. Respondent agrees that EPA may conduct an inspection at any time in order to confirm that the SEP is being undertaken in conformity with the representation made herein.
26. No later than thirty (30) calendar days after the completion of the project, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the Lead and Children’s Section, to the attention of Mr. Elmore Johnson. The report shall include the following:
 - a. an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it;
 - b. copies of appropriate documentation, including invoices and receipts, showing a total expenditure of THIRTY SIX THOUSAND DOLLARS (\$36,000), or greater, was spent to remove the forty eight (48) wooden exterior doors, and purchase and install lead free energy-star doors described in paragraph 22; and
 - c. photographs of the newly installed doors.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

27. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.
28. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.”
29. If Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of **THIRTY SIX THOUSAND DOLLARS (\$36,000)** for the SEP, Respondent shall pay to the United States a stipulated penalty of the difference between \$36,000 and the amount spent.
30. For purposes of paragraph 29, the determination whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA.
31. If Respondent fails to timely submit a SEP completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day the report is late.
32. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such

penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

33. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
34. 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.
35. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
37. This CAFO shall be binding upon the Respondent, its successors and assigns.
38. 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.


THIS SECTION INTENTIONALLY LEFT BLANK.

VIII. Effective Date

39. 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: MW Group LLC
Docket No.: TSCA-04-2012-2619(b)

By:  Date: 6/6/14
Name: Donald James
Title: Manager

Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

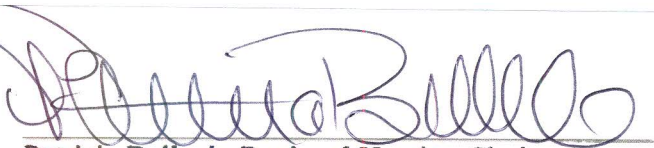
By:  Date: 6-16-14
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 25 day of June, 2014.

By:  Date: 6/25/14
Susan B. Schub
Regional Judicial Officer

MW Group LLC d/b/a Weyland Apartments
Docket No.: TSCA-04-2012-2619(b)

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

Date: 6-24-14