



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

SEP 30 2009

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 OCT -8 PM 4: 52  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Steven Papas  
Apartments R Us  
686 Bergen Avenue  
Jersey City, NJ 07304

Re: In the Matter of **Apartments R Us**  
Docket No. TSCA-02-2009-9168

Dear Mr. Papas:

Enclosed is the Complaint and Notice of Opportunity for Hearing (the Complaint) and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control Act (TSCA), Section 409, and regulations promulgated pursuant to TSCA set forth at 40 C.F.R. Part 745 Subpart F.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within *thirty (30)* days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal

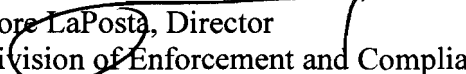
conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these SEPs are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)  
Steve Zissou, Esquire - Counsel for Respondent

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL PROTECTION AGENCY REGIONAL OFFICE  
OCT 1 8 2009 11:52 AM  
REGIONAL HEARINGS OFFICE

----- X  
In the Matter of :  
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 Apartments R Us, :  
 :  
 :  
 Respondent. :  
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 :  
 Proceeding under Section 16(a) of :  
 the Toxic Substances Control Act. :  
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**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

Docket No.  
TSCA-02-2009-9168

COMPLAINT

This is a civil administrative action instituted pursuant to §16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.* This Complaint serves notice of Complainant's preliminary determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745 Subpart F, which were promulgated pursuant to § 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, codified at 42 U.S.C. § 4851 *et seq.* (hereinafter "§ 1018").

Complainant in this proceeding, the Director, Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

1. Respondent is Apartments R Us (hereinafter "Respondent").
2. Respondent's primary place of business is located at 686 Bergen Avenue, Jersey City, NJ 07304.
3. Respondent is subject to the regulations and requirements pertaining to the Lead-Based Paint Disclosure Rule promulgated pursuant to 42 U.S.C. § 4852d, and set forth at 40 C.F.R. Part 745, Subpart F.
4. On or about October 31, 2008, duly designated representatives of EPA conducted an inspection of lease agreement files for the following properties: 200 Summit Avenue, Jersey City, New Jersey; 112 Duncan Avenue, Jersey City, New Jersey; 85 Williams Avenue, Jersey City, New Jersey; and 262 Fairmount Avenue, Jersey City, New Jersey, pursuant to § 11 of TSCA, 15 U.S.C. § 2610 (hereinafter "the Inspection").
5. The Inspection was conducted for the purpose of determining Respondent's compliance with the EPA regulations and requirements pertaining to Lead-Based Paint Disclosure, 40 C.F.R. Part 745, Subpart F.

### 200 Summit Avenue Lease Agreements

6. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “owner” as that term is defined in 40 C.F.R § 745.103, for the property located at 200 Summit Avenue, Jersey City, NJ 07306.
7. The property located at 200 Summit Avenue, Jersey City, NJ (hereinafter “200 Summit Avenue property”) 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), and was constructed in 1904.
8. The 200 Summit Avenue property consists of approximately four (4) “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.
9. The 200 Summit Avenue property 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.
10. On or about March 4, 2008, Alexander Trilivas entered into a contract to lease 200 Summit Avenue, Apartment 2R, Jersey City, NJ, from Respondent.
11. On or about September 16, 2008, Tiffany Malone entered into a contract to lease 200 Summit Avenue, Apartment 1L, Jersey City, NJ, from Respondent.

### 112 Duncan Avenue Lease Agreements

12. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “owner” as that term is defined in 40 C.F.R § 745.103, of the property located at 112 Duncan Avenue, Jersey City, NJ 07306.
13. The property located at 112 Duncan Avenue, Jersey City, NJ (hereinafter “112 Duncan Avenue property”) 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), and was constructed in 1901.
14. The 112 Duncan Avenue property consists of approximately six (6) “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.
15. The 112 Duncan Avenue property 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.
16. On or about September 2, 2008, Daniela Sanchez entered into a contract to lease 112 Duncan Avenue, Apartment 2L, Jersey City, NJ, from Respondent. A minor under 18 years of age would reside at this address.

### 85 Williams Avenue Lease Agreements

17. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “owner” as that term is defined in 40 C.F.R § 745.103, of the property located at

85 Williams Avenue, Jersey City, NJ 07306.

18. The property located at 85 Williams Avenue, Jersey City, NJ (hereinafter “85 Williams Avenue property”) 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), and was constructed in 1907.
19. The 85 Williams Avenue property consists of approximately six (6) “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.
20. The 85 Williams Avenue property 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.
21. On or about January 1, 2008, Dorothy A. Smith entered into a contract to lease 85 Williams Avenue, Apartment 1B, Jersey City, NJ from Respondent.
22. On or about February 20, 2008, Ruben Pabon entered into a contract to lease 85 Williams Avenue, Apartment 2B, Jersey City, NJ from Respondent.

#### 262 Fairmount Avenue Lease Agreements

23. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “owner” as that term is defined in 40 C.F.R § 745.103, of the property located at 262 Fairmount Avenue, Jersey City, NJ 07306.
24. The property located at 262 Fairmount Avenue, Jersey City, NJ (hereinafter “262 Fairmount Avenue property”) 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), and was constructed in 1865.
25. The 262 Fairmount Avenue property consists of approximately three (3) “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.
26. The 262 Fairmount Avenue property 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.
27. On or about December 21, 2007, Diane Smith entered into a contract to lease 262 Fairmount Avenue, Apartment Floor 1, Jersey City, NJ from Respondent.
28. On or about July 1, 2008, Shalika R. Mahmuwd entered into a contract to lease 262 Fairmount Avenue, Apartment Floor 2, Jersey City, NJ from Respondent. A minor under 18 years of age would reside at this address.
29. On or about August 31, 2008, Robert Peoples entered into a contract to lease 262 Fairmount Avenue, Apartment 3R, Jersey City, NJ from Respondent. A minor under 18 years of age would reside at this address.
30. Each of the persons leasing the apartments described in paragraphs 10-11, 16, 21-22, and

27-29 above, is a “lessee” of target housing as that term is defined at 40 C.F.R. § 745.103.

31. None of the real estate transactions described in paragraph 30, above, constitutes an exempt transaction pursuant to 40 C.F.R. § 745.101.

### COUNT 1

#### **Lead Warning Statement**

32. Paragraphs 1 through 31 are realleged and incorporated as if fully set forth herein.
33. Under 40 C.F.R. § 745.113(b)(1), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a “Lead Warning Statement” which is set forth in the regulation.
34. Upon information and belief, Respondent leased the target housing apartments listed in paragraphs 10-11, 16, 21-22, and 27-29, above.
35. For each real estate transaction for the rental of the apartments described in paragraph 34 above, the contract to lease did not contain a Lead Warning Statement as specified in 40 C.F.R. § 745.113(b)(1) nor was the statement attached to the contract for lease at the time of the leasing.
36. Failure to include or attach a Lead Warning Statement as specified in 40 C.F.R. § 745.113(b)(1) to the contract to lease is a violation of 40 C.F.R. § 745.113(b)(1).
37. Respondent’s failures to comply with 40 C.F.R. § 745.113(b)(1) are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

### COUNT 2

#### **Statement Disclosing Known Lead-Based Paint**

38. Paragraphs 1 through 31 are realleged and incorporated as if fully set forth herein.
39. Under 40 C.F.R. § 745.113(b)(2), the lessor shall include in each contract to lease target housing, 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 such presence.
40. Upon information and belief, Respondent leased the target housing apartments listed in paragraphs 10-11, 16, 21-22, and 27-29, above.
41. For the real estate transactions for the rental of the apartments described in paragraph 40, above, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence was not included within nor attached to the contract to lease at the time of leasing.
42. Failure to include or attach a statement by the lessor disclosing the presence of known

lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence to the contract to lease is a violation of 40 C.F.R. § 745.113(b)(2).

43. Respondent's failures to comply with 40 C.F.R. § 745.113(b)(2) are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

### COUNT 3

#### **List of Records or Reports Pertaining to Lead-Based Paint**

44. Paragraphs 1 through 31 are realleged and incorporated as if fully set forth herein.
45. Under 40 C.F.R. § 745.113(b)(3), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or an indication that no such records or reports are available.
46. Upon information and belief, Respondent leased the target housing apartments listed in paragraphs 10-11, 16, 21-22, and 27-29, above.
47. For each real estate transaction for the rental of the apartments described in paragraph 46, above, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or an indication that no such records or reports are available, was not attached to or included in the contract to lease at the time of leasing.
48. Failure to include or attach to the contract to lease a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or to indicate if no such records or reports are available, is a violation of 40 C.F.R. § 745.113(b)(3).
49. Respondent's failures to comply with 40 C.F.R. § 745.113(b)(3) are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

### COUNT 4

#### **Lessee's Receipt of Information**

50. Paragraphs 1 through 31 are realleged and incorporated as if fully set forth herein.
51. Under 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming the receipt of: (1) the lessor's statement disclosing the presence of known lead-based paint (or indicating no knowledge); (2) the list of any records or reports available to the lessor pertaining to lead-based paint; and (3) the lead hazard information pamphlet required by 15 U.S.C. § 2686.
52. Upon information and belief, Respondent leased the target housing apartments listed in paragraphs 10-11, 16, 21-22, and 27-29, above.

53. For each real estate transaction for the rental of the apartments described in paragraph 52, above, the contract did not contain within the contract nor as an attachment, the statement described in paragraph 51, above.
54. Failure of the contract to contain the statement described in paragraph 51, above, is a violation of 40 C.F.R. § 745.113(b)(4).
55. Respondent's failures to comply with 40 C.F.R. § 45.113(b)(4) are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

#### COUNT 5

#### **Lessor, Agent and Lessee Certification Statement**

56. Paragraphs 1 through 31 are realleged and incorporated as if fully set forth herein.
57. Under 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include, as an attachment or within the contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.
58. Upon information and belief, Respondent leased the target housing apartments listed in paragraphs 10-11, 16, 21-22, and 27-29, above.
59. For each real estate transaction for the rental of the apartments described in paragraph 58, above, the contract did not contain signatures of the lessor, agents, or lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.
60. Failure of the contract to include, as an attachment or within the contract, the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature, is a violation of 40 C.F.R. § 745.113(b)(6).
61. Respondent's failures to comply with 40 C.F.R. § 745.113(b)(6) are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

#### PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with § 1018 and 40 C.F.R. § 745.118(f), which authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum amount has been adjusted to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule. 61 Fed. Reg. 69361 (1996) for violations occurring after July 28, 1997. See 62 Fed. Reg. 35038 (1997). Penalties for violations occurring after March 15, 2004 were further adjusted for inflation by the Agency effective October 1, 2004.

For purposes of determining the amount of any penalty to be assessed, § 16 requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged. As to the violator, § 16 requires EPA to take into account its ability to pay, the effect of the penalty on its ability to continue to do business, its history of prior such violations, its degree



of culpability, as well as such other matters as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time, with specific reference to EPA's "Guidelines for Assessment of Civil Penalties Under § 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 Fed. Reg. 59,770), and EPA's December, 2007 "§ 1018 Disclosure Rule Enforcement Response and Penalty Policy." These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases. Copies of these documents are available on request, or can be found on the web at <http://cfpub.epa.gov/compliance/resources/policies/civil/tscal/>.

Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

COUNT 1: Lead Warning Statement

Circumstance Level: **2**

Total number of violations: **8**

Extent Category:                    Significant (minor under 18) **3**  
    Minor (occupants over 18) **5**

Penalty Per Violation:            Significant     \$ 6,450  
    Minor             \$ 1,550

3 Significant violations X \$6,450 = \$19,350

5 Minor violations X \$1,550 = \$ 7,750

Total Proposed Assessment for this Count:    \$ 27,100

COUNT 2: Statement by Lessor Disclosing Known Lead-Based Paint

Circumstance Level: **3**

Total number of violations: **8**

Extent Category:                    Significant (minor under 18) **3**  
    Minor (occupants over 18) **5**

Penalty Per Violation:            Significant     \$ 5,160  
    Minor             \$ 770

3 Significant violations X \$5,160 = \$15,480

5 Minor violations X \$ 770 = \$ 3,850

Total Proposed Assessment for this Count:    \$ 19,330

COUNT 3: List of Records or Reports Pertaining to Lead-Based Paint

Circumstance Level: **5**

Total number of violations: **8**

Extent Category:                    Significant (minor under 18) **3**  
    Minor (occupants over 18) **5**

Penalty Per Violation:            Significant     \$1,680

	Minor	\$ 260
	3 Significant violations X \$1,680 =	\$5,040
	5 Minor violations X \$ 260 =	\$1,300
Total Proposed Assessment for this Count:		\$ 6,340
<u>COUNT 4: Lessees' Receipt of Information</u>		
Circumstance Level: 4		
Total number of violations: 8		
Extent Category:	Significant (minor under 18)	3
	Minor (occupants over 18)	5
Penalty Per Violation:	Significant	\$ 3,220
	Minor	\$ 520
	3 Significant violations X \$3,220 =	\$ 9,660
	5 Minor violations X \$ 520 =	\$ 2,600
Total Proposed Assessment for this Count:		\$ 12,260
<u>COUNT 5: Lessor, Agent and Lessee Certification Statement</u>		
Circumstance Level: 6		
Total number of violations: 8		
Extent Category:	Significant (minor under 18)	3
	Minor (occupants over 18)	5
Penalty Per Violation:	Significant	\$ 640
	Minor	\$ 130
	3 Significant violations X \$640 =	\$ 1,920
	5 Minor violations X \$ 130 =	\$ 650
Total Proposed Assessment for this Count:		\$ 2,570
<u>TOTAL ASSESSED PENALTY</u>		<u>\$67,600</u>

#### PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," and are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

##### A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is

entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). See generally Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. See Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: "A civil penalty for a violation of section 2614...of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity...for a hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554]."

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA order. See 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

### C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

### D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

### INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant

information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Melva J. Hayden, Esq.  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866  
(212)-637-3230

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

#### RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States

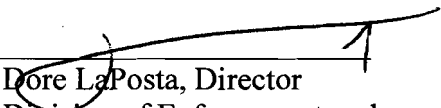
of America”, in the full amount of the penalty assessed in this Complaint to the following addressee:

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 of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA’s receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent’s right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent’s obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: SEPTEMBER 30, 2009

  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2

TO: Steven Papas  
Apartments R Us  
686 Bergen Avenue  
Jersey City, NJ 07304

Enclosures

**In the Matter of Apartments R Us**  
**Docket No. TSCA-02-2009-9168**

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number TSCA-02-2009-9168, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Steven Papas  
Apartments R Us  
686 Bergen Avenue  
Jersey City, NJ 07304

and

Steve Zissou, Esquire  
Steve Zissou and Associates  
4240 Bell Boulevard, Suite 302  
Bayside, NY 11361

I carried by hand the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: OCT - 8 2009  
New York, New York

Smilrud N. Bay  
