

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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IN THE MATTER OF:))
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)) COMPLAINT AND NOTICE
John Laughter) OF OPPORTUNITY FOR) CLERK
) A HEARING
)
Respondent))
))
)) Docket Number
)) TSCA-01-2010-0007
Proceeding under Section 16(a) of the))
of the Toxic Substances Control Act,))
42 U.S.C. § 2615(a)))
_____)

ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR A HEARING

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the 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, 40 C.F.R. Part 22. The Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1.

II. NATURE OF THE ACTION

2. The Respondent in this action, John Laughter, is hereby notified of the Legal Enforcement Manager's determination that the Respondent has violated TSCA Section 409, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("the Act"), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F ("Disclosure Rule"). Complainant seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by Complainant of civil and/or criminal penalties. In support of its Complaint, Complainant alleges the following:

III. STATUTORY AND REGULATORY BACKGROUND

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account in the sale or rental of houses and apartments.

4. In 1996, the United States Environmental Protection Agency ("EPA") promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R.

§ 745.103, the housing stock addressed by the Act's transaction requirements is termed "target housing," and is defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

6. The implementing regulations set forth at 40 C.F.R. Part 745, Subpart F, require sellers and lessors of target housing, among other things, to provide to purchasers and lessees a lead hazard information pamphlet; including as an attachment, or within the contract to lease target housing, a Lead Warning Statement; a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof; and a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with the Subpart F disclosure requirements is a violation of TSCA Section 409, 15 U.S.C. § 2689.

8. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of TSCA Section 409, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty.

9. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation applicable under Section 16 shall be no more than \$10,000, except for violations occurring after July 28, 1997, which shall be no more than \$11,000. For violations occurring after January 12, 2009, the penalty for each violation shall be no more than \$16,000.

IV. GENERAL ALLEGATIONS

10. Respondent, John Laughter, is an individual who resides at 17 Gano Avenue, Johnston, Rhode Island. John Laughter owns and offers for lease residential real estate.

11. At the time of the violations alleged in this Complaint, Respondent owned and offered for lease fifteen residential apartment units located at 92 Benefit Street, 101 Oak Street, and 288-292 Rathbun Street, Woonsocket, Rhode Island.

12. At the time of the violations alleged in this Complaint, Respondent was thus an “owner” and a “lessor” as defined in 40 C.F.R. § 745.103, of the properties listed in Paragraph 11 above.

13. Respondent offered for lease the following units located in Woonsocket, Rhode Island, on the dates set forth below:

92 Benefit Street, 1 st floor	April 13, 2008
92 Benefit Street, 4 th floor	November 5, 2006
290 Rathbun Street, 3 rd floor front (part of the 288-292 Rathbun Street property)	October 27, 2007
290 Rathbun Street, 3 rd floor rear (part of the 288-292 Rathbun Street property)	January 1, 2008

14. The housing units listed in Paragraph 13 above currently are, and at the time of the violations alleged in this Complaint were “target housing,” as defined in 40 C.F.R. § 745.103, and do not qualify for exemptions to the provisions of the Act or the Disclosure Rule.

15. On December 1, 1999, certified environmental lead inspectors from RW Environmental, Inc., in Providence, Rhode Island, inspected 92 Benefit Street, Unit 2, in Woonsocket, Rhode Island.

16. As a result of this 1999 inspection, on January 17, 2001, the Rhode Island Department of Health (“RIDOH”) issued a Notice of Violation (“NOV”) for lead hazard violations in 92 Benefit Street, Unit 2 under Rhode Island’s Lead Poison Prevention Act and ordered abatement of the violations. The violations included lead hazards from interior surfaces, exterior siding/trim, and soil. A Certification of Lead-Safe Status (interior only) dated March 27, 2001, was issued by the RIDOH. RIDOH issued a Second NOV regarding the same lead hazard violations (exterior only) on April 30, 2002. In August 2002, the Rhode Island Office of the Attorney General issued a Notice of Intention to File Suit against John Laughter for his failure to completely abate lead hazards at 92 Benefit Street, as required in the second NOV. Subsequently, a certification of Lead-Safe Status (exterior and soil) dated May 13, 2003, was issued by the RIDOH.

17. On December 28, 1999, certified environmental lead inspectors from Environmental Lead Detection, in Taunton, Massachusetts, inspected 288 Rathbun Street, Unit 2 Left, in Woonsocket, Rhode Island.

18. As a result of this 1999 inspection, on January 25, 2000, RIDOH issued a NOV for lead hazard violations in 288 Rathbun Street, Unit 2 Left under Rhode Island’s Lead Poisoning Prevention Act and ordered abatement of the violations. The violations included lead hazards from interior surfaces, common stairwells and porches, exterior trim, and soil. On May 8, 2000, RIDOH issued a Second NOV to John Laughter for his

failure to fully abate lead hazards as ordered in RIDOH's initial NOV for the 288 Rathbun Street property. In December 2000, the Rhode Island Office of the Attorney General issued a Notice of Intention to File Suit against John Laughter for his failure to completely abate lead hazards at 288 Rathbun Street, as required in the second NOV. On March 21, 2001, a Certification of Lead-Safe Status (interior only) was issued, and on October 22, 2001, a Certification of Lead-Safe Status (exterior and soil) was issued by the RIDOH.

19. RIDOH maintains a database of blood lead tests for children under the age of six in Rhode Island. From May 6, 1999 through May 8, 2002, there have been a total of at least four children having blood lead levels greater than 10 micrograms per deciliter living at the 92 Benefit Street property and the 288-292 Rathbun Street properties.

Childhood lead poisoning is defined in the Rhode Island regulations as a confirmed blood lead level of 10 micrograms of lead per deciliter of whole blood in a child under six years of age. *RI Rules and Regulations for Lead Poisoning Prevention*, R23-24.6-PB, Section 1.0. Studies by the Centers for Disease Control and Prevention have linked blood lead levels as low as 10 micrograms per deciliter with decreased intelligence and other adverse neurodevelopmental effects in children aged six and under. See Department of Health and Human Services, Centers for Disease Control and Prevention, "Surveillance for Elevated Blood Lead Levels Among Children – United States, 1997-2001," *Morbidity and Mortality Weekly Report*, Vol. 52, No SS-10, September 12, 2003, p. 2.

20. On June 16, 2008, EPA representatives conducted an inspection at the residence of John Laughter at 17 Gano Avenue, Johnston, Rhode Island, to evaluate Respondent's compliance with the Disclosure Rule.

V. VIOLATIONS

21. Based on Complainant's review of documentation contained in Respondent's files and information gathered by EPA representatives, EPA identified the following violations of the Act:

Count I – Failure to provide to lessee any records or reports available to the lessor pertaining to lead-based paint and/ or lead-based paint hazards in the target housing.

22. Paragraphs 1 through 21 above are incorporated by reference as if fully set forth herein.

23. Pursuant to 40 C.F.R. § 745.107(a)(4), lessors are required to provide lessees with any records or reports available to the lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing. This requirement includes records or reports regarding common areas.

24. Respondent failed to provide to the following lessees any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing:

- a. Tenants who became obligated to lease 92 Benefit Street, 1st floor, Woonsocket, Rhode Island on or about April 13, 2008;
- b. A tenant who became obligated to lease 92 Benefit Street, 4th floor, Woonsocket, Rhode Island on or about November 5, 2006;
- c. Tenants who became obligated to lease 290 Rathbun Street, 3rd floor front, Woonsocket, Rhode Island on or about October 27, 2007; and
- d. Tenants who became obligated to lease 290 Rathbun Street, 3rd floor rear, Woonsocket, Rhode Island on or about January 1, 2008.

25. At the time of the violations alleged in paragraph 24 above, the records described in Paragraphs 16 and 18 above were available to Respondent.

26. Respondent's failure to provide to the lessees listed above any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing prior to the lessees being obligated to lease target housing on four separate occasions constitutes four violations of 40 C.F.R. § 745.107(a)(4) and TSCA Section 409, 15 U.S.C. § 2689.

VI. PROPOSED PENALTY

27. Section 1018(b)(5) of the Act, 42 U.S.C. § 4825d(b)(5), and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation under Section 16 of TSCA shall be no more than \$10,000, except for violations occurring after July 28, 1997, which shall be no more than \$11,000. For violations occurring after January 12, 2009, the penalty for each violation shall be no more than \$16,000.

28. In determining the amount of any penalty to be assessed, TSCA Section 16, 15 U.S.C. § 2615, requires the Complainant to consider the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. To assess a penalty for the violations alleged in the Complaint, Complainant will take into account the particular facts and circumstances of this case with specific reference to EPA's December 1999 Section 1018 Disclosure Rule Enforcement Response Policy ("ERP"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

29. By this Complaint, Complainant seeks to assess Respondent civil penalties of up to \$11,000 per violation for four violations of 40 C.F.R. § 745.107 (a)(4) for failure to provide to lessees any records or reports available to the lessor pertaining to lead-based paint in the target housing including common areas. A lessor's failure to provide available records of lead-based paint and/or lead-based paint hazards is a serious violation of the Disclosure Rule regulations. The failure to provide these records has a high probability of impairing a lessee's ability to properly assess and weigh the potential health risks associated with leasing target housing. It also undermines the intent of the Disclosure Rule which is to disclose to potential lessees any and all information regarding lead-based paint and/or lead-based paint hazards that may be present in the target housing the lessees are considering renting.

30. Complainant will calculate a proposed penalty based, in part, on its current knowledge of Respondent's financial condition. Respondent shall pay the civil penalty with a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on this check the docket number of this Complaint (EPA Docket No. TSCA-01-2010-0007). The check shall be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Five Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

and

Sarah Meeks
Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
Five Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912

If payment is made within 30 days of receipt of the Complaint, Respondent need not file an answer. If Respondent agrees to pay the penalty but needs additional time, he may file a statement to that effect with the Regional Hearing Clerk within 30 days of receipt of the Complaint. In that event, Respondent need not file an answer and will be allowed 60 days from receipt of the Complaint to pay the penalty. See 40 C.F.R. § 22.18(a).

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

31. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer. An answer to this Complaint must be filed with the Regional Hearing Clerk within 30 days of receipt of this Complaint** (see address above). In his answer, Respondent may contest any material fact contained in the Complaint. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts

Respondent intend to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

VIII. DEFAULT ORDER

32. If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). The penalty assessed in this Complaint 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).

IX. SETTLEMENT CONFERENCE

33. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Consent Agreement and Final Order.

34. Please note that a request for an informal settlement conference does not extend the period within which a written answer must be submitted in order to avoid

default. To explore the possibility of settlement in this matter, Respondent should contact Sarah Meeks, Enforcement Counsel, Office of Environmental Stewardship, EPA Region I, at the address listed above, (617) 918-1438, or meeks.sarah@epa.gov. Sarah Meeks has been designated to represent Complainant and receive service in this action.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
Five Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912

1/15/10
Date

In the Matter of John Laughter
EPA Docket No. TSCA-01-2010-0007

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING was sent to the following persons, in the manner specified, on the date below:


Original and one copy,
hand-delivered:

Wanda Santiago
Regional Hearing Clerk (ORA18-1)
U.S. EPA, Region I
Five Post Office Square, Suite 100
Boston, MA 02109-3912

Copy by Certified Mail,
Return Receipt Requested

John Laughter,
17 Gano Avenue
Johnston, RI 02919

Dated: 1/19/10



Sarah Meeks
Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
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Mail Code: OES04-3
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