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DOCKET NO. TSCA-03-2012-0268

ANSWER AND AFFIRMATIVE
DEFENSES TO ADMINISTRATIVE
COMPLAINT AND FORMAL
REQUEST FOR HEARING

MR. ALFONSO D'AMICO
105 LAKEWOOD DRIVE
CANONSBURG, PA 15317

FILED ON BEHALF OF:
ALFONSO D'AMICO

Respondent.

541 Euclid Ave., Apt. 3
Canonsburg, PA 15317

COUNSEL OF RECORD FOR THIS
PARTY:

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205 Bernstein Ave.
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540 Duquesne Ave., Front
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540 Duquesne Ave., Rear
Canonsburg, PA 15317

8 Birch Way
Muse, PA 1350

121 Murdock Street, Apt. 1
Canonsburg, PA 15317

112 Boyle Ave.
Canonsburg, PA 15317

517 Highfield Ave.
Canonsburg, PA 15317

112 ½ Boyle Ave.
Canonsburg, PA 15317

245 Grace Ave.
Canonsburg, PA 15317

519 Highfield Ave.
Canonsburg, PA 15317

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**ANSWER AND AFFIRMATIVE DEFENSES TO ADMINISTRATIVE COMPLAINT AND
FORMAL REQUEST FOR HEARING**

AND NOW, comes Respondent, Alfonso D'Amico, by and through his undersigned attorneys, John P. Corcoran, Jr., Esquire, and Jones, Gregg, Creehan & Gerace, LLP, and files the following Answer and Affirmative Defenses to Administrative Complaint filed and served on September 28, 2012, and Formal Request for Hearing, and in support thereof states as follows:

II. JURISDICTION, BACKGROUND AND DEFINITIONS

1. The allegations contained in ¶1 of the Administrative Complaint (hereinafter referred to as "Complaint") constitute conclusions of law regarding jurisdiction to which no response is deemed required. To the extent a response is deemed required, jurisdiction is denied and strict proof thereof is required at time of Hearing.

2. The allegations contained in ¶2 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code

of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

3. The allegations contained in ¶3 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

4. The allegations contained in ¶4 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

5. The allegations contained in ¶5 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to

the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

6. The allegations contained in ¶¶6 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

7. The allegations contained in ¶¶7 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

8. The allegations contained in ¶¶8 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

9. The allegations contained in ¶9 of the Complaint refer to a section of the Code of Federal Regulations and, therefore, constitute a conclusion of law to which no response is deemed required. To the extent a response is deemed required, the Code of Federal Regulations are set forth in the Code and, therefore, speak for themselves. Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

10. The allegations contained in ¶10 of the Complaint refer to the section of the Code of Federal Regulations. To the extent that this reference differs in any way or substantial form from the actual Regulations, the allegations are deemed denied. Further responding, Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

11. The allegations contained in ¶11 of the Complaint refer to the section of the Code of Federal Regulations. To the extent that this reference differs in any way or substantial form from the actual Regulations, the allegations are deemed denied. Further responding, Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

12. The allegations contained in ¶12 of the Complaint refer to the section of the Code of Federal Regulations. To the extent that this reference differs in any way or substantial form from the actual Regulations, the allegations are deemed denied. Further responding, Further responding, by referencing these allegations, the

Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

13. The allegations contained in ¶13 of the Complaint refer to the section of the Code of Federal Regulations. To the extent that this reference differs in any way or substantial form from the actual Regulations, the allegations are deemed denied. Further responding, Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

14. The allegations contained in ¶14 of the Complaint refer to the section of the Code of Federal Regulations. To the extent that this reference differs in any way or substantial form from the actual Regulations, the allegations are deemed denied. Further responding, Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

15. The allegations contained in ¶15 of the Complaint refer to the section of the Code of Federal Regulations. To the extent that this reference differs in any way or substantial form from the actual Regulations, the allegations are deemed denied. Further responding, Further responding, by referencing these allegations, the Respondent does not admit to the application of said Regulations in this Hearing, and expressly denies the application of these Regulations.

III. GENERAL ALLEGATIONS

16. The allegations contained in ¶16 of the Complaint are denied. It is denied that Alfonso D'Amico is a person or "Respondent"¹ within the meaning of the Code sections referenced therein and strict proof thereof is demanded at the time of Hearing. Further responding, to the extent that these allegations refer to Respondent who is the party identified in the alleged Leases, Mr. D'Amico is not identified in the Leases and, therefore, strict proof hereof is demanded at time of Hearing as to proper party in action.

17. The allegations contained in ¶17 of the Complaint are denied. It is denied that the Respondent was the Lessor of residential real properties as identified therein and strict proof thereof is demanded at time of Hearing. Further responding, there has been no violations in any Leases identified in this paragraph. Moreover, the leases related to these properties constitute statements in writing, the terms of which speak for themselves and no further response is deemed required.

18. The allegations contained in ¶18 of the Complaint are denied as conclusions of law to which no response is deemed required. To the extent that a response is deemed required, it is denied that the properties constitute "residential dwellings" under the applicable federal codes and strict proof thereof is demanded at the time of Hearing.

19. The allegations contained in ¶19 of the Complaint are denied as conclusions of law to which no response is deemed required. To the extent that a response is deemed required, it is denied that the properties constitute "residential

¹The use of the term "Respondent" in this Answer and Affirmative Defenses does not admit that D'Amico is a Respondent or responsible party within the meaning of the Toxic Substances Control Act and/or Residential Lead-Based Paint Hazard Reduction Act of 1992.

dwellings” or target housing under the applicable federal codes and strict proof thereof is demanded at the time of Trial.

20. The allegations contained in ¶20 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the “541 Euclid Ave., Apt. 3 Lease Transaction” is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶20 are denied in accordance with 40 C.F.R. §22.15(b).

21. The allegations contained in ¶21 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶21 are denied in accordance with 40 C.F.R. § 22.15(b).

22. The allegations contained in ¶22 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a

belief as to the truth of the allegations. 40 C.F.R. § 22.16(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

23. The allegations contained in ¶23 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "541 Euclid Ave., Apt. 2 Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶23 are denied in accordance with 40 C.F.R. §22.15(b).

24. The allegations contained in ¶24 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶24 are denied in accordance with 40 C.F.R. § 22.15(b).

25. The allegations contained in ¶25 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.16(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

26. The allegations contained in ¶26 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "536 W. Pike Street Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶26 are denied in accordance with 40 C.F.R. §22.15(b).

27. The allegations contained in ¶27 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore,

all factual allegations set forth in ¶27 are denied in accordance with 40 C.F.R. § 22.15(b).

28. The allegations contained in ¶28 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

29. The allegations contained in ¶29 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "419 Duquesne Ave., Front Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶29 are denied in accordance with 40 C.F.R. §22.15(b).

30. The allegations contained in ¶30 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is

without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶30 are denied in accordance with 40 C.F.R. § 22.15(b).

31. The allegations contained in ¶31 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

32. The allegations contained in ¶32 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "446 Highfield Ave. Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶32 are denied in accordance with 40 C.F.R. §22.15(b).

33. The allegations contained in ¶33 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to

Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶33 are denied in accordance with 40 C.F.R. § 22.15(b).

34. The allegations contained in ¶34 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

35. The allegations contained in ¶35 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "205 Bernstein Ave. Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶35 are denied in accordance with 40 C.F.R. §22.15(b).

36. The allegations contained in ¶36 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶36 are denied in accordance with 40 C.F.R. § 22.15(b).

37. The allegations contained in ¶37 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

38. The allegations contained in ¶38 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "540 Duquesne Ave., Front Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal

Regulations. Further responding, all factual allegations set forth in ¶38 are denied in accordance with 40 C.F.R. §22.15(b).

39. The allegations contained in ¶39 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶39 are denied in accordance with 40 C.F.R. § 22.15(b).

40. The allegations contained in ¶40 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

41. The allegations contained in ¶41 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "540 Duquesne Ave., Rear Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a

determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶41 are denied in accordance with 40 C.F.R. §22.15(b).

42. The allegations contained in ¶42 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶42 are denied in accordance with 40 C.F.R. § 22.15(b).

43. The allegations contained in ¶43 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

44. The allegations contained in ¶44 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "8 Birch Way Lease Transaction" is not

attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶44 are denied in accordance with 40 C.F.R. §22.15(b).

45. The allegations contained in ¶45 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶45 are denied in accordance with 40 C.F.R. § 22.15(b).

46. The allegations contained in ¶46 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

47. The allegations contained in ¶47 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "121 Murdock Street, Apt. 1 Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶47 are denied in accordance with 40 C.F.R. §22.15(b).

48. The allegations contained in ¶48 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶48 are denied in accordance with 40 C.F.R. § 22.15(b).

49. The allegations contained in ¶49 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not

constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

50. The allegations contained in ¶50 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "112 Boyle Ave. Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶50 are denied in accordance with 40 C.F.R. §22.15(b).

51. The allegations contained in ¶51 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶51 are denied in accordance with 40 C.F.R. § 22.15(b).

52. The allegations contained in ¶52 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a

belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

53. The allegations contained in ¶53 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "517 Highfield Ave. Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶53 are denied in accordance with 40 C.F.R. §22.15(b).

54. The allegations contained in ¶54 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶54 are denied in accordance with 40 C.F.R. § 22.15(b).

55. The allegations contained in ¶55 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

56. The allegations contained in ¶56 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "112 ½ Boyle Ave. Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶56 are denied in accordance with 40 C.F.R. §22.15(b).

57. The allegations contained in ¶57 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore,

all factual allegations set forth in ¶57 are denied in accordance with 40 C.F.R. § 22.15(b).

58. The allegations contained in ¶58 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

59. The allegations contained in ¶59 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "245 Grace Ave. Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶59 are denied in accordance with 40 C.F.R. §22.15(b).

60. The allegations contained in ¶60 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is

without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶¶60 are denied in accordance with 40 C.F.R. § 22.15(b).

61. The allegations contained in ¶¶61 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

62. The allegations contained in ¶¶62 refer to an instrument in writing, the terms of which speak for themselves, and further response is not deemed required. Further responding, the alleged Lease for the "519 Highfield Ave. Lease Transaction" is not attached to the Complaint. Accordingly, based on lack of specific identification of Lease, the Respondent is without sufficient knowledge to form a determination as to which Lease Transaction is referenced. 40 C.F.R. § 22.15(b). Furthermore, it is denied that Respondent was or is a lessor as defined by Federal Regulations. Further responding, all factual allegations set forth in ¶¶62 are denied in accordance with 40 C.F.R. §22.15(b).

63. The allegations contained in ¶¶63 constitute conclusions of law as to definition in Federal Regulations to which no response is deemed required. Further responding, it cannot be determined whether the Lease Transaction is subject to

Federal Regulations as defined in the Complaint, because the writing is not attached for reference. Furthermore, the Respondent cannot respond because the Respondent is without sufficient knowledge to form a determination as to the Lease Transaction referenced herein, because no writing is attached. 40 C.F.R. § 22.15(b). Furthermore, all factual allegations set forth in ¶63 are denied in accordance with 40 C.F.R. § 22.15(b).

64. The allegations contained in ¶64 constitute conclusions of law as to terms in Federal Regulations to which no response is deemed required. To the extent a response is deemed required, the Respondent is without sufficient information to form a belief as to the truth of the allegations. 40 C.F.R. § 22.15(b). Further responding, the factual allegations are specifically denied and this alleged Lease Transaction does not constitute a violation of Federal Regulations as promulgated and referenced in the subject paragraph and strict proof thereof is requested at time of Hearing.

IV. VIOLATIONS

Counts 1 through 10 – 40 C.F.R. § 113(b)(1)

65. Paragraph 65 is an incorporation paragraph to which no response is required. To the extent a response is required, Paragraphs 1-64 are incorporated herein as though fully set forth herein at length.

66. The allegations contained in ¶66 of the Complaint are denied. It is denied that the Respondent failed to include a "Lead Warning Statement" containing language set forth in Federal Regulations and strict proof thereof is demanded at the time of Hearing. Further responding, to the extent that the alleged transactions contained in this paragraph refer to Lease Transactions, the specific writings purporting to be the

alleged transactions identified therein are not attached to the Complaint. Therefore, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶66 and, therefore such allegations are denied. Further responding, to the extent the Respondent is determined to be a lessor by the Administrative Judge, any and all Lease Transactions engaged in by Respondent had appropriate "Lead Warning Statement" incorporated therein or through an attachment to any alleged lease. Therefore, allegations in ¶66 of the Complaint are denied. Moreover, to the extent a response is deemed further required, each and every allegation is denied in its entirety as if more fully set forth herein below.

67. The allegations contained in ¶67 of the Complaint constitute legal conclusions to which no response is deemed required. To the extent a response is deemed required, it is denied that the Respondent failed to include "Lead Warning Statement" as an attachment to, or within, the leases for the subject Lease Transactions. Further responding, the assertion that ten (10) separate violations occurred is specifically denied and proof thereof is requested at the time of Hearing. Further responding, this allegation of separate violations is unduly overbroad, and duplicative and violates both the due process clause and the equal protection clause of the United States and Pennsylvania Constitutions, as well as Federal Environmental Protection Agency Policy and Regulations. Moreover, to the extent a response is deemed further required, each and every allegation is denied in its entirety as if more fully set forth herein below.

Counts 11 through 20 – 40 C.F.R. § 113(b)(2)

68. Paragraph 68 is an incorporation paragraph to which no response is required. To the extent a response is required, Paragraphs 1-67 are incorporated herein as though fully set forth herein at length.

69. The allegations contained in ¶69 of the Complaint are explicitly denied. It is denied that the Respondent failed to include a "Lead Warning Statement" containing language set forth in Federal Regulations and strict proof thereof is demanded at the time of Hearing. Further responding, to the extent that the alleged transactions contained in this paragraph refer to Lease Transactions, the specific transaction identified therein is not attached to the Complaint. Therefore, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in ¶69 and, therefore such allegations are denied. Further responding, to the extent the Respondent is determined to be a lessor by the Administrative Judge, any and all Lease Transactions engaged in by Respondent had appropriate "Lead Warning Statements" incorporated therein or through an attachment. Therefore, allegations in ¶69 of the Complaint are denied. Moreover, to the extent a responsive is deemed required, each and every allegation is denied in its entirety as if more fully set forth herein below.

70. The allegations contained in ¶70 of the Complaint constitute legal conclusions to which no response is deemed required. To the extent a response is deemed required, the Respondent never failed to provide appropriate information in accordance with Federal Regulations in any Lease Transactions. Further responding, it is specifically denied that Respondent failed to include a statement disclosing the presence of or additional information concerning known lead-based paint and/or lead-

based paint hazards by indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards at the properties described in ¶69 above, either as attachments to, or within, the leases for the housing identified in the Lease Transactions. It is further denied that there were any violations of the Federal Regulations identified in ¶70 of the Complaint, and strict proof thereof is demanded at the time of Hearing. Moreover, to the extent a responsive is deemed required, each and every allegation is denied in its entirety as if more fully set forth herein below.

Counts 21 through 30 – 40 C.F.R. § 745.113(b)(3)

71. Paragraph 71 is an incorporation paragraph to which no response is required. To the extent a response is required, Paragraphs 1-70 are incorporated herein as though fully set forth herein at length.

72. The allegations contained in ¶72 of the Complaint are denied. Further responding, it is specifically denied that Respondent failed to include a list of records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards at the target housing described herein that have been provided to the lessee(s), or to indicate that no such records or reports were available, either as attachments to, or within, the leases for the target housing identified in the Complaint. Further responding, it is denied that any of these properties are target housing. Further responding, it is denied that the Respondent failed to provide proper lists and records in accordance with the Federal Regulations. Further responding, to the extent that this allegation constitutes legal conclusion, no response is deemed required and it is specifically denied that there was any violation of 40 C.F.R. § 745.113(b)(3). Moreover,

to the extent a further response is deemed required, each and every allegation is denied in its entirety as if more fully set forth herein below.

73. The allegations contained in ¶73 of the Complaint are legal conclusions to which no response is deemed required. To the extent a response is deemed required, it is denied that the Respondent failed to include a list of records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards at the housing described in ¶72 in the Complaint or to indicate that no such records or reports were available as either attachments to, or within, the leases set forth in ¶72 of the Complaint. Further responding, to the extent a response is deemed required, each and every allegation is denied in its entirety as if more fully set forth herein below.

Counts 31 through 45 – 40 C.F.R. § 745.113(b)(4)

74. Paragraph 74 is an incorporation paragraph to which no response is required. To the extent a response is required, Paragraphs 1-73 are incorporated herein as though fully set forth herein at length.

75. The allegations contained in ¶75 of the Complaint are denied in their entirety. Further responding, the Respondent at all times relevant hereto did provide appropriate statements to the lessee(s) in accordance with Federal Regulations identified therein. Further responding, Respondent also provided all proper statements affirming receipt as required by Federal Regulations. Further responding, at all times relevant hereto, lead hazard information pamphlets, as required by Federal Regulations, were provided to all lessee(s) identified in ¶75 of the Complaint. Furthermore, the allegations set forth in ¶75 of the Complaint constitute conclusions of law to which no

response is deemed required. However, to the extent a responsive is deemed required, each and every allegation is denied in its entirety as if more fully set forth herein below.

76. The allegations contained in ¶76 of the Complaint are denied in their entirety. Further responding, the Respondent at all times relevant hereto did provide appropriate statements to the lessee(s) in accordance with Federal Regulations identified therein. Further responding, all proper statements by the lessees affirming the receipt of information as required by Federal Regulations was met. Further responding, at all times relevant hereto, lead hazard information pamphlets, as required by Federal Regulations, were provided to all lessee(s) identified in ¶76 of the Complaint. Furthermore, the allegations set forth in ¶76 of the Complaint constitute conclusions of law to which no response is deemed required.

Counts 46 through 60 – 40 C.F.R. § 745.113(b)(6)

77. Paragraph 77 is an incorporation paragraph to which no response is required. To the extent a response is required, Paragraphs 1-76 are incorporated herein as though fully set forth herein at length.

78. The allegations contained in ¶78 of the Complaint are denied. It is denied that the notices had not contained proper signatures, certifications, and dates of signatures as required by federal law identified in ¶78. It is further denied that any of these Lease Transactions were in any way violative of the federal requirements of 40 C.F.R. § 745.113(b)(6). Moreover, to the extent a responsive is deemed required, each and every allegation is denied in its entirety as if more fully set forth herein below.

79. The allegations contained in ¶79 of the Complaint constitute legal conclusions to which no response is deemed required. To the extent that a response is

deemed required, it is specifically denied that the Respondent failed to include required signatures, certifications, and dates of signatures as required by Federal Regulations identified in ¶79. Further responding, all of the leases contained appropriate language and all attachments and proper information was provided as required by federal law. Furthermore, to the extent a response is deemed further required, each and every allegation is hereby denied in its entirety as if more fully set forth herein below.

V. PROPOSED CIVIL PENALTY

80. The paragraphs identified under Proposed Civil Penalty do not indicate specific violations of the Respondent but, instead, identify legal conclusions to which no response is deemed required. However, to the extent a response is deemed required, each and every allegation set forth under the term Proposed Civil Penalty is explicitly denied in its entirety as if more fully set forth herein below. Further responding, the allegations of the Proposed Civil Penalty identified in the Complaint violate the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the policies and regulations promulgated thereunder. Further responding, all of the Affirmative Defenses identified herein below are incorporated herein. Further responding, all of the allegations contained in ¶¶11-79 of the Complaint are expressly denied in accordance with 40 C.F.R. § 22.15(b).

VI. AFFIRMATIVE DEFENSES PURSUANT TO 40 C.F.R. §22.15(b)

81. The Complaint fails to state a claim due to lack of specificity and failure to attach as evidence the alleged Lease Transactions identified therein.

82. The Environmental Protection Agency is estopped from asserting a claim because the Respondent, after meeting with Environmental Protection Agency officials,

was advised of the specific procedure and fulfilled that procedure as set forth by the representatives of the Environmental Protection Agency.

83. The Environmental Protection Agency is estopped from asserting any claim since its agents reviewed and authorized the specific disclosure requirements of the Respondent.

84. The Environmental Protection Agency has waived any right to assert any claim due to their conduct and specific training of the Respondent in the use of the forms.

85. The Environmental Protection Agency has expressly violated the Small Business Policy as promulgated under Federal Regulations.

86. The strict liability enforcement of the Federal Regulations identified in the Complaint violate both federal and state constitutional law.

87. At all times relevant hereto, all lessor(s) were provided with the Environmental Protection Agency approved lead hazard information pamphlets provided by the Environmental Protection Agency.

88. The Lease Transactions identified in the Complaint are not target housing under Federal Code and Regulations.

89. To the extent that any of the lease of housing was for elderly people or individuals with disabilities, there was no requirements for provision of disclosure under the Residential Lead-Based Paint Hazard Reduction Act of 1992.

90. Mr. Alfonso D'Amico is not a Respondent as defined by the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA") and/or any other applicable Federal Regulations.

91. The Respondent did not knowingly violate any regulations of the RLBPHRA and/or TSCA.

92. The Lease Transactions including language in all leases was proper and met the requirements of the RLBPHRA and/or TSCA.

93. The Proposed Civil Penalty identified in the Complaint violate the enforcement response and penalty policy of the United States Environmental Protection Agency as promulgated in December, 2007.

94. The Environmental Protection Agency issued a Notice of Non-Compliance and Respondent followed that Notice of Non-Compliance in detail and with specificity. Therefore, the action by the Environmental Protection Agency violates the Doctrine of Equitable Estoppel and Waiver.

95. In calculating the proposed penalties, the Environmental Protection Agency did not properly apply the gravity-based penalty factors including, but not limited to, the "nature of the violation"; "the circumstances of the violation"; and "the extent of harm that may result from a given violation."

96. The Environmental Protection Agency did not properly apply the alleged inability of the Respondent to pay or continue doing business based upon these alleged violations.

97. The violations are duplicative and violate the due process clause of the United States Constitution and the Pennsylvania State Constitution.

98. All of the facts identified in the Complaint itself are specifically denied as required by the Consolidated Rules of Practice at 40 C.F.R. § 22.15(b).

99. The underlying claims and actions have been settled and discontinued and dismissed based upon the actions of the agents of the Environmental Protection Agency.

100. The allegations in the Complaint fail to state a claim upon which relief can be granted against the alleged Respondent.

101. The claims by the Environmental Protection Agency are barred due to the Doctrine of Issue Preclusion and/or Claim Preclusion.

102. All of the claims by the Environmental Protection Agency are barred due to the violations of the statute of limitations within the appropriate Federal Regulations.

103. All of the alleged proposed financial penalties are in error and appropriate adjustments are required in accordance with the status of the Respondent as a small business owner.

104. All required parties under any Lease Transaction have completed and signed necessary certification acknowledgement language required by 40 C.F.R. § 745.107 and 745.113, *et seq.*

105. All of the leases identified herein have met all of the requirements of 40 C.F.R. § 745.107 and 745.113, *et seq.*

VI. REQUEST FOR HEARING PURSUANT TO 40 C.F.R. §22.15(c)

106. The Respondent respectfully requests a full Hearing on the merits of all allegations identified in the Complaint. Respondent also reserves any and all rights to discovery as mandated under Federal Regulations.

VII. ALTERNATIVE DISPUTE RESOLUTION ACT

107. The Respondent respectfully requests that an Alternative Dispute Resolution procedure be employed for settlement and resolution of this matter prior to the initiation of any further costs.

**VIII. CERTIFICATION OF FILING PURSUANT TO
40 C.F.R. § 22.15(a)**

107. The undersigned hereby certifies an original and one (1) copy of the written Answer and Affirmative Defenses to Administrative Complaint and Formal Request for Hearing has been filed with the Regional Hearing Clerk and served upon all other parties identified in the Complaint pursuant to overnight Federal Express Service.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

BY:


JOHN P. CORCORAN, JR., ESQUIRE

ATTORNEY FOR RESPONDENT,
MR. ALFONSO D'AMICO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES TO ADMINISTRATIVE COMPLAINT AND FORMAL REQUEST FOR HEARING** has been furnished, via Overnight Federal Express Delivery, this 24th day of October, 2012, to:

REGIONAL HEARING CLERK (3RC00)
EPA REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029
(ORIGINAL AND ONE COPY PURSUANT TO 40 C.F.R. §22.15(a))

BENJAMIN COHAN
OFFICE OF REGIONAL COUNSEL (3RC30)
U.S. EPA REGION 3
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029

JONES, GREGG, CREEHAN & GERACE, LLP

BY:


JOHN P. CORCORAN, JR., ESQUIRE

ATTORNEY FOR RESPONDENT,
MR. ALFONSO D'AMICO