



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 27 2011

REPLY TO THE ATTENTION OF:  
LC - 8J

FIRST CLASS, CERTIFIED MAIL

Receipt No. 7009 1680 0000 7666 4554

Ms. Cindy Draher  
C & D Properties  
99 North College Street  
Akron, Ohio 44304

Re: In the Matter of: Cindy Draher, Docket Number: TSCA-05-2012-0001

Dear Ms. Draher:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency against you under Section 16(a) of the Toxics Substances Control Act, 15 U.S.C. § 2615(a), and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), at 40 C.F.R. Part 22.

As provided in the Complaint, if you would like to request a hearing, you must file an answer to the Complaint in which you specifically request a hearing. You must file your answer within 30 days after receiving the Complaint with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 and send a copy to Jeffery Trevino, Office of Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please note that if you do not file an answer to the Complaint within 30 days after receiving the Complaint, EPA may seek a default order assessing the proposed penalty and the assessed penalty will be due 30 days after the order becomes final.

If you intend to file with the Regional Hearing Clerk, as part of the record in this matter, documents that include personal financial information (such as personal income tax returns), you may submit those documents "under seal." The rules for submitting confidential information under seal are set forth at Section 22.5(d) of the Consolidated Rules, 40 C.F.R. § 22.5(d). You also may want to refer to 40 C.F.R. Part 2, Subpart B. For more information on the procedures for submitting information under seal, go to: <http://epa.gov/oalj/orders/alj-practice-manual.pdf>. EPA reserves its right to object to the submission of documents under seal.

In addition, you may file under seal documents containing information that you believe may be subject to a personal privacy interest. Such personal privacy information may include social

security numbers, personal addresses and telephone numbers, dates of birth and medical information. When filing documents that you believe may be subject to a personal privacy interest, follow the procedures for submitting confidential business information at Section 22.5(d) of the Consolidated Rules, 40 C.F.R. § 22.5(d).

Whether or not you request a hearing, you may request an informal settlement conference. If you would like to request a conference, or if you have any questions about this matter, please contact Jeffery Trevino, Associate Regional Counsel, at (312) 886-6729.

Sincerely,

*Michael D. Harris* *for M.G.*

Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

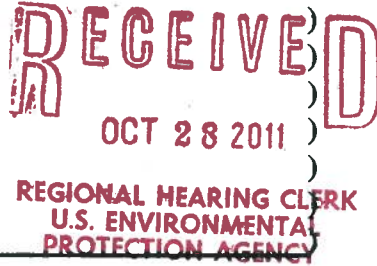
cc: Regional Hearing Clerk (E-19J)  
Jeffery Trevino (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Cindy Draher  
Akron, Ohio

Respondent,



Docket No. TSCA-05-2012-0001

Proceeding to Assess a Civil Penalty  
Under Section 16(a) of the Toxic Substances  
Control Act, 15 U.S.C. § 2615(a).

Complaint

1. This is a civil administrative action to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, Region 5, U.S. Environmental Protection Agency.
3. Respondent is Cindy Draher, a person doing business in the State of Ohio, and the Owner, C & D Properties, 99 North College Street, Akron, Ohio, 44304, a business in the State of Ohio.

Statutory and Regulatory Background

4. The U.S. Congress promulgated the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), at 42 U.S.C. § 4851 *et seq.* It found that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6. It found that lead poisoning in children, even in low levels, causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. It further found that the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead

poisoning are mandatory disclosure and notification requirements for residential sales and rentals. Therefore, the Act requires the Administrator of EPA and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing offered for sale or lease. 42 U.S.C. § 4852d.

5. On March 6, 1996, EPA and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F, and 24 C.F.R. Part 35, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule), pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings were required to comply with the Disclosure Rule by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which impose certain requirements on the sale or lease of target housing. 40 C.F.R. § 745.100.

7. "Target housing" is any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.

8. A "lessor" is any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103

9. A "lessee" is any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103

10. The seller or lessor of target housing must complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

40 C.F.R. § 745.100.

11. Each contract to lease target housing must include, as an attachment or within the contract, a Lead Warning Statement with the specific regulatory language cited in 40 C.F.R. § 745.113(b)(1); a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing with any additional supporting information available, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards (40 C.F.R. § 745.113(b)(2)); a list of any records or reports available to the lessor that have been provided to the lessee regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records are available (40 C.F.R. § 745.113(b)(3)); a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696 (40 C.F.R. § 745.113(b)(4)); and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements to the best of their knowledge (40 C.F.R. § 745.113(b)(6)).

12. Failure or refusal to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f). 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e).

13. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred between July 28, 1997, and January 12, 2009, and may assess a civil penalty of up to \$16,000 for each such violation that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

### General Allegations

14. Complainant incorporates into these General Allegations all preceding paragraphs.
15. The dwellings at the following addresses in Akron, Ohio, were single-family dwellings: 180 Kenwood, 523 Edgewood, 161 Portage Path, 824 Stadleman, 904 Aberdeen, 200 Kenwood, 4 Manila Place, 1027 Diagnol Road, 1298 South Hawkins, 1001 Dover, 378 Thorton, 206 Denver, 847 5<sup>th</sup> Avenue, and 1294 South Hawkins, (the Single-Family Dwellings).
16. Therefore, the Single-Family Dwellings were “Residential Dwellings,” as defined in 40 C.F.R. § 745.103.
17. The Residential Dwellings were constructed prior to 1978.
18. Therefore, the Residential Dwellings were “target housing,” as defined in 40 C.F.R. § 745.103.
19. On January 16, 2003, the Childhood Lead Poisoning Prevention Program, Akron Health Department, Akron, Ohio, issued to Cindy Draher, “Orders to Comply with the Akron Lead Poisoning Ordinance” by February 24, 2003, for the Residential Dwelling located at 523 Edgewood, Akron, Ohio.
20. Respondent owned the Residential Dwellings from at least March 1, 2005, - June 24, 2009.
21. On June 24, 2009, EPA and HUD Representatives completed an Inspection of Respondent at C & D Properties, 99 North College Street, Akron, Ohio, to determine whether she complied with Section 1018 of the Act, 42 U.S.C. § 4852d, and its implementing regulations at 40 C.F.R. Part 745, Subpart F.
22. On February 18, 2010, Complainant issued to Respondent an Information Request which sought, among other things, copies of her March 1, 2005, to February 18, 2010, contracts to

lease her single-family dwellings, and their corresponding lead-based paint disclosure documentation.

23. On April 19, 2010, Respondent provided Complainant with her Response to the Information Request.

24. On the following dates Respondent, either directly or through her authorized agent, contracted to lease the Residential Dwellings at the following addresses.

| <u>Date of Lease</u> | <u>Address</u>                           |
|----------------------|--|
| May 1, 2007.         | 180 Kenwood, Akron, Ohio.                |
| August 1, 2007.      | 523 Edgewood, Akron, Ohio.               |
| December 10, 2007.   | 161 Portage Path, Akron, Ohio.           |
| January 11, 2008.    | 824 Stadleman, Akron, Ohio.              |
| June 1, 2008.        | 904 Aberdeen, Akron, Ohio.               |
| September 18, 2008.  | 200 Kenwood Avenue, Akron, Ohio.         |
| September 18, 2008.  | 4 Manila Place, Akron, Ohio.             |
| November 1, 2008.    | 1027 Diagnol Road, Akron, Ohio.          |
| January 30, 2009.    | 1298 South Hawkins, Akron, Ohio.         |
| February 1, 2009.    | 1001 Dover, Akron, Ohio.                 |
| April 2, 2009.       | 378 Thornton, Akron, Ohio.               |
| May 1, 2009.         | 206 Denver, Akron, Ohio.                 |
| May 15, 2009.        | 847 5 <sup>th</sup> Avenue, Akron, Ohio. |
| June 15, 2009.       | 1294 South Hawkins, Akron, Ohio.         |

25. Each of these contracts to lease covered a term of occupancy greater than 100 days.

26. Therefore, Respondent was a “lessor,” as defined in 40 C.F.R. § 745.103.

27. Therefore, each individual who signed a contract to lease to pay rent in exchange for occupancy of one of the Residential Dwellings was a “lessee,” as defined in 40 C.F.R. § 745.103.

**Count 1**

**May 1, 2007; Target Housing at 180 Kenwood, Akron, Ohio**

28. Complainant incorporates into this Count paragraphs 1 – 27 above.

29. Respondent failed to include, either within the contract to lease, dated May 1, 2007, or as an attachment to the contract to lease, the target housing located at 180 Kenwood, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

30. Respondent’s failure constituted a violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 2 - 6**

**August 1, 2007; Target Housing at 523 Edgewood, Akron, Ohio**

31. Complainant incorporates into these Counts paragraphs 1 – 27 above.

32. Respondent failed to include, either within the contract to lease, dated August 1, 2007, or as an attachment to the contract to lease, the target housing located at 523 Edgewood, Akron, Ohio, the Lead Warning Statement with the language cited at 40 C.F.R. § 745.113(b)(1).

33. Respondent failed to include, either within the contract to lease, dated August 1, 2007, or as an attachment to the contract to lease, the target housing located at 523 Edgewood, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence.

34. Respondent failed to include, either within the contract to lease, dated August 1, 2007, or as an attachment to the contract to lease, the target housing located at 523 Edgewood, Akron,



Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

35. Respondent failed to include, either within the contract to lease, dated August 1, 2007, or as an attachment to the contract to lease, the target housing located at 523 Edgewood, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

36. Respondent failed to include, either within the contract to lease, dated August 1, 2007, or as an attachment to the contract to lease, the target housing located at 523 Edgewood, Akron, Ohio, 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.

37. Respondent's failures constituted violations of 40 C.F.R. §§ 745.113(b)(1), (2), (3), (4) and (6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

#### **Count 7**

#### **December 10, 2007; Target Housing at 161 Portage Path, Akron, Ohio**

38. Complainant incorporates into this Count paragraphs 1 – 27 above.

39. Respondent failed to include, either within the contract to lease, dated December 10, 2007, or as an attachment to the contract to lease, the target housing located at 161 Portage Path, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

40. Respondent's failure constituted violations of 40 C.F.R. § 745.113(b)(4), 15 U.S.C.

§ 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 8**

**January 11, 2008; Target Housing at 824 Stadleman, Akron, Ohio**

41. Complainant incorporates into this Count paragraphs 1 – 27 above.

42. Respondent failed to include, either within the contract to lease, dated January 11, 2008, or as an attachment to the contract to lease, the target housing located at 824 Stadleman, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

43. Respondent's failure constituted a violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 9 - 12**

**June 1, 2008; Target Housing at 904 Aberdeen, Akron, Ohio**

44. Complainant incorporates into these Counts paragraphs 1 – 27 above.

45. Respondent failed to include, either within the contract to lease, dated June 1, 2008, or as an attachment to the contract to lease, the target housing located at 904 Aberdeen, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence.

46. Respondent failed to include, either within the contract to lease, dated June 1, 2008, or as an attachment to the contract to lease, the target housing located at 904 Aberdeen, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

47. Respondent failed to include, either within the contract to lease, dated June 1, 2008, or

as an attachment to the contract to lease, the target housing located at 904 Aberdeen, Akron, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

48. Respondent failed to include, either within the contract to lease, dated June 1, 2008, or as an attachment to the contract to lease, the target housing located at 904 Aberdeen, Akron, Ohio, 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.

49. Respondent's failures constituted violations of 40 C.F.R. §§ 745.113(b)(2), (3), (4) and (6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 13 - 15**  
**September 18, 2008; Target Housing at 200 Kenwood, Akron, Ohio**

50. Complainant incorporates into these Counts paragraphs 1 – 27 above.

51. Respondent failed to include, either within the contract to lease, dated September 18, 2008, or as an attachment to the contract to lease, the target housing located at 200 Kenwood, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence.

52. Respondent failed to include, either within the contract to lease, dated September 18, 2008, or as an attachment to the contract to lease, the target housing located at 200 Kenwood Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

53. Respondent failed to include, either within the contract to lease, dated September 18, 2008, or as an attachment to the contract to lease, the target housing located at 200 Kenwood

Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

54. Respondent's failures constituted violations of 40 C.F.R. §§ 745.113(b)(2), (3), and (4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 16**  
**September 18, 2008; Target Housing at 4 Manila Place, Akron, Ohio**

55. Complainant incorporates into this Count paragraphs 1 – 27 above.

56. Respondent failed to include, either within the contract to lease, dated September 18, 2008, or as an attachment to the contract to lease, the target housing located at 4 Manila Place, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

57. Respondent's failure constituted a violation of 40 C.F.R. §§ 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 17**  
**November 1, 2008; Target Housing at 1027 Diagnol, Akron, Ohio**

58. Complainant incorporates into this Count paragraphs 1 – 27 above.

59. Respondent failed to include, either within the contract to lease, dated November 1, 2008, or as an attachment to the contract to lease, the target housing located at 1027 Diagnol, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

60. Respondent's failure constituted a violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C.

§ 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 18**

**January 30, 2009; Target Housing at 1298 Hawkins, Akron, Ohio**

61. Complainant incorporates into this Count paragraphs 1 – 27 above.

62. Respondent failed to include, either within the contract to lease, dated January 30, 2009, or as an attachment to the contract to lease, the target housing located at 1298 Hawkins, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

63. Respondent's failure constituted a violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 19 - 21**

**February 1, 2009; Target Housing at 1001 Dover, Akron, Ohio**

64. Complainant incorporates into these Counts paragraphs 1 – 27 above.

65. Respondent failed to include, either within the contract to lease, dated February 1, 2009, or as an attachment to the contract to lease, the target housing located at 1001 Dover, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence.

66. Respondent failed to include, either within the contract to lease, dated February 1, 2009, or as an attachment to the contract to lease, the target housing located at 1001 Dover, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

67. Respondent failed to include, either within the contract to lease, dated February 1,

2009, or as an attachment to the contract to lease, the target housing located at 1001 Dover, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

68. Respondent's failures constituted violations of 40 C.F.R. §§ 745.113(b)(2), (3), and (4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 22 - 24**  
**April 2, 2009; Target Housing at 378 Thorton, Akron, Ohio**

69. Complainant incorporates into these Counts paragraphs 1 – 27 above.

70. Respondent failed to include, either within the contract to lease, dated April 2, 2009, or as an attachment to the contract to lease, the target housing located at 378 Thorton, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence.

71. Respondent failed to include, either within the contract to lease, dated April 2, 2009, or as an attachment to the contract to lease, the target housing located at 378 Thorton, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

72. Respondent failed to include, either within the contract to lease, dated April 2, 2009, or as an attachment to the contract to lease, the target housing located at 378 Thorton, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

73. Respondent's failures constituted violations of 40 C.F.R. §§ 745.113(b)(2), (3), and (4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 25**

**May 1, 2009; Target Housing at 206 Denver, Akron, Ohio**

74. Complainant incorporates into this Count paragraphs 1 – 27 above.

75. Respondent failed to include, either within the contract to lease, dated May 1, 2009, or as an attachment to the contract to lease, the target housing located at 206 Thorton, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

76. Respondent's failure constituted a violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 26**

**May 15, 2009; Target Housing at 847 5<sup>th</sup> Avenue, Akron, Ohio**

77. Complainant incorporates into this Count paragraphs 1 – 27 above.

78. Respondent failed to include, either within the contract to lease, dated May 15, 2009, or as an attachment to the contract to lease, the target housing located at 847 5<sup>th</sup> Avenue, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

79. Respondent's failure constituted a violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 27 – 30**

**June 15, 2009; Target Housing at 1294 Hawkins, Akron, Ohio**

80. Complainant incorporates into these Counts paragraphs 1 – 27 above.

81. Respondent failed to include, either within the contract to lease, dated June 15, 2009, or as an attachment to the contract to lease, the target housing located at 1294 Hawkins, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence.

82. Respondent failed to include, either within the contract to lease, dated June 15, 2009, or as an attachment to the contract to lease, the target housing located at 1294 Hawkins Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

83. Respondent failed to include, either within the contract to lease, dated June 15, 2009, or as an attachment to the contract to lease, the target housing located at 1294 Hawkins, Akron, Ohio, a statement by the lessee affirming receipt of the information listed at 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

84. Respondent failed to include, either within the contract to lease, dated June 15, 2009, or as an attachment to the contract to lease, the target housing located at 1294 Hawkins Akron, Ohio, 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.

85. Respondent's failures constituted violations of 40 C.F.R. §§ 745.113(b)(2), (3), (4) and (6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

#### **Proposed Civil Penalty**

Complainant proposes that the Administrator assess against Respondent a civil penalty of \$37,770.00 for the violations alleged in this Complaint.



EPA reviews the nature, circumstances, extent and gravity of the alleged violations, and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require to propose an appropriate civil penalty amount. 15 U.S.C. § 2615.

EPA also reviews its *Section 1018 - Disclosure Rule Enforcement Response Policy*, dated December 2007 (Response Policy) to calculate and propose its appropriate civil penalty. The Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular facts. The severity of each violation alleged in the complaint, as discussed in the Response Policy, is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assess an appropriate proposed civil penalty include information pertaining to a Respondent's ability to pay a civil penalty, any evidence which demonstrates no lead-based paint existed in the cited housing, and any evidence Respondent took steps to discover the presence of, and/or has taken steps to abate, lead-based paint and its hazards in subject housing.

#### **Rules Governing This Proceeding**

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

#### **Filing and Service of Documents**

Respondent must file with the Regional Hearing Clerk the original and one copy of each

document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Jeffery M. Trevino to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Jeffrey Trevino at (312) 886-6729. His address is:

Jeffery M. Trevino (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### **Penalty Payment**

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Jeffery M. Trevino and to:

Julie Morris (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that she is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

To calculate the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address provided above.

Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that she has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;

- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

Whether Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Jeffery M. Trevino at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

#### **Continuing Obligation to Comply**

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation

to comply with TSCA and any other applicable federal, state, or local law.

**Consent Agreement and Final Order**

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondent in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

10/27/11  
Date

Michael D. Harris for M.G.  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

TSCA-05-2012-0001

RECEIVED  
OCT 28 2011

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint in the resolution of the civil administration involving Cindy Draher, of C & D Properties, was filed on October 28, 2011, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7666 4554, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," to:

Ms. Cindy Draher  
C & D Properties  
99 North College Street  
Akron, Ohio 44304

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Jeffery M. Trevino, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. TSCA-05-2012-0001

**RECEIVED**  
OCT 28 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY