

L. Guy
6/30/10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In Re:)	
)	Administrative Complaint
Dobbins, Fisher & Pittman Associates, Inc.)	and Notice of Opportunity
d/b/a Dobbins, Fisher & Pittman Realtors)	for Hearing
339 3 rd Avenue)	
South Charleston, WV 25303)	Docket No. TSCA-03-2010-0325
)	
RESPONDENT)	
)	Proceeding Under Section 16(a) of
)	the Toxic Substances Control Act,
)	15 U.S.C. Section 2615(a)

**ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING**

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). The Administrator has delegated this authority, under TSCA, to the Regional Administrators, and this authority has been further delegated in U.S. EPA Region III to, *inter alia*, the Director, Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A, dated August 26, 2002, as modified by a Notice, dated

July 21, 2008, to account for the renaming of the Waste and Chemicals Management Division to the Land and Chemicals Division.

The Respondent in this action is Dobbins, Fisher & Pittman Associates, Inc., doing business as Dobbins, Fisher & Pittman Realtors (“Respondent”). By issuing this Complaint, Complainant alleges violations by Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the “Disclosure Rule”), in relation to two (2) sales agreements and seven (7) lease agreements associated with 9 different target housing units, described more fully below.

Failure to comply with RLBPHRA Section 1018, 42 U.S.C. § 4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of TSCA Section 409, 15 U.S.C. § 2689. Pursuant to TSCA Section 16, 15 U.S.C. § 2615, violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.

In support of this Complaint, the Complainant makes the following allegations, findings of fact and conclusions of law:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689; Section 1018 of RLBPHRA, 42 U.S.C. § 4852d; 40 C.F.R. Part 745, Subpart F; and 40 C.F.R. §§ 22.1(a)(5) and 22.4.

2. Pursuant to 40 C.F.R. § 745.101, the requirements of 40 C.F.R. Part 745, Subpart F apply to all transactions to sell or lease “target housing,” with exceptions not here relevant.

3. Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means “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.”

4. Pursuant to 40 C.F.R. § 745.103, the term “agent” means, in relevant part, “any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.”

5. Pursuant to 40 C.F.R. § 745.115(a), each agent shall ensure compliance with all requirements of this 40 C.F.R. Part 745, Subpart F. To ensure compliance, agents are required, in relevant part, to “ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of §§ 745.107, 745.110, and 745.113.”

6. As set forth in more detail in Paragraphs 13-14, 21-22, 35-36, 51-52, 67-68, 83-84, 99-100, 115-116 and 131-132, the following nine (9) properties listed below are and, at all times relevant to the violations alleged herein, were “target housing” as defined at RLBPHRA Section 1004(27), TSCA Section 401(17) and 40 C.F.R. § 745.103:

<u>Counts</u>	<u>Type</u>	<u>Address</u>	<u>Lease/Sale Date</u>
1-2	Sale	612 Margaret Street, Charleston, WV	Apr 3, 2007
3-4	Sale	41 Marilyn Road, Scott Depot, WV	May 3, 2007
5-10	Lease	5114 Dean Drive, Crosslanes, WV	Aug 24, 2006
11-16	Lease	119 Washington Ave, Dunbar, WV	May 16, 2007
17-22	Lease	1433 Mountain Road, Charleston, WV	May 31, 2007
23-28	Lease	1422 Fourth Ave, Charleston, WV	Aug 17, 2007
29-34	Lease	649 Gordon Drive, Charleston, WV	Sep 14, 2007
35-40	Lease	4614 Venable Ave, Charleston, WV	Oct 11, 2007
41-46	Lease	4308 Jones Ave, South Charleston, WV	Oct 24, 2007

COUNTS 1 – 2 (Margaret Street Property)

7. The allegations of Paragraphs 1 through 6 of this Complaint are incorporated herein by reference.

8. 40 C.F.R. § 745.113(a)(2) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “[a] statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.”

9. 40 C.F.R. § 745.113(a)(3) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “a list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.”

10. 40 C.F.R. § 745.113(a)(4) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “a statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S. C. 2696” (hereinafter referred to as the “Receipt of Information Statement”).

11. 40 C.F.R. § 745.113(a)(5) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “a statement by the purchaser that he/she has either:

- i. Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or
- ii. Waived the opportunity”

(hereinafter referred to as the “Risk Assessment Statement”).

12. Respondent served as an “agent,” as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated April 3, 2007, for the sale of a property located at 612 Margaret Street in Charleston, West Virginia (“Margaret Street Property”).

13. At all times relevant to the allegations in this Complaint, the Margaret Street Property was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. § 745.103.

14. At all times relevant to the allegations in this Complaint, the Margaret Street Property was “target housing,” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

15. The contract for the sale of the Margaret Street Property, dated April 3, 2007, did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4).

16. The contract for the sale of the Margaret Street Property, dated April 3, 2007, did not include the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5).

17. Count 1: Under 40 C.F.R. § 745.118(e), Respondent’s failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the April 3, 2007 contract for the sale of the Margaret Street Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

18. Count 2: Under 40 C.F.R. § 745.118(e), Respondent’s failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the April 3, 2007 contract for the sale of the Margaret Street Property included the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 3 – 4 (Marilynn Road Property)

19. The allegations of Paragraphs 1 through 18 of this Complaint are incorporated herein by reference.

20. Respondent served as an “agent,” as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated May 3, 2007, for the sale of a property located at 41 Marilyn Road in Scott Depot, West Virginia (“Marilyn Road Property”).

21. At all times relevant to the allegations in this Complaint, the Marilyn Road Property was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. § 745.103.

22. At all times relevant to the allegations in this Complaint, the Marilyn Road Property was “target housing,” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

23. The contract for the sale of the Marilyn Road Property, dated May 3, 2007, did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4).

24. The contract for the sale of the Marilyn Road Property, dated May 3, 2007, did not include the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5).

25. Count 3: Under 40 C.F.R. § 745.118(e), Respondent’s failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 3, 2007 contract for the sale of the Marilyn Road Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

26. Count 4: Under 40 C.F.R. § 745.118(e), Respondent’s failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 3, 2007 contract for the sale of the Marilyn Road Property included the Risk Assessment Statement required by 40 C.F.R.

§ 745.113(a)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 5 – 10 (Dean Drive Property)

27. The allegations of Paragraphs 1 through 26 of this Complaint are incorporated herein by reference.

28. 40 C.F.R. § 745.113(b)(1) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.

29. 40 C.F.R. § 745.113(b)(2) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract:

[a] statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.

(These alternative statements and disclosures shall hereinafter be collectively referred to as the “Disclosure Statement.”)

30. 40 C.F.R. § 745.113(b)(3) provides, in relevant part, that each contract to lease target housing shall include as an attachment or within the contract, “a list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate” (such list, or the alternative statement that no such records or reports are available, shall hereinafter be referred to as the “Disclosure List”).

31. 40 C.F.R. § 745.113(b)(4) provides, in relevant part, that each contract to lease target housing shall include as an attachment or within the contract, “a statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S. C. 2696” (hereinafter referred to as the “Receipt of Information Statement”).

32. 40 C.F.R. § 745.113(b)(5) provides, in relevant part, that each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:

- (i) The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d, and
- (ii) The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]

(hereinafter referred to as the “Agent Statement”).

33. 40 C.F.R. § 745.113(b)(6) provides, in relevant part, that each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature” (hereinafter referred to as the “Certification of Accuracy”).

34. Respondent served as an “agent,” as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated August 24, 2006, for the lease of a property located at 5114 Dean Drive in Crosslanes, West Virginia (“Dean Drive Property”).

35. At all times relevant to the allegations in this Complaint, the Dean Drive Property was housing constructed prior to 1978, and was neither “housing for the elderly” or

persons with disabilities nor a "0-bedroom dwelling" as those terms are defined in 40 C.F.R. § 745.103.

36. At all times relevant to the allegations in this Complaint, the Dean Drive Property was "target housing," within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

37. The contract for the lease of the Dean Drive Property, dated August 24, 2006, did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). A Lead Warning Statement was included in a form later appended to such contract on June 25, 2008.

38. The contract for the lease of the Dean Drive Property, dated August 24, 2006, did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008.

39. The contract for the lease of the Dean Drive Property, dated August 24, 2006, did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008.

40. The contract for the lease of the Dean Drive Property, dated August 24, 2006, did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). A Receipt of Information Statement was included in a form later appended to such contract on June 25, 2008.

41. The contract for the lease of the Dean Drive Property, dated August 24, 2006, did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). An Agent Statement was included in a form later appended to such contract on June 25, 2008.

42. The contract for the lease of the Dean Drive Property, dated August 24, 2006, did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). A Certification of Accuracy was included in a form later appended to such contract on June 25, 2008.

43. Count 5: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

44. Count 6: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

45. Count 7: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

46. Count 8: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

47. Count 9: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

48. Count 10: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 11 – 16 (Washington Avenue Property)

49. The allegations of Paragraphs 1 through 48 of this Complaint are incorporated herein by reference.

50. Respondent served as an "agent," as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated May 16, 2007, for the lease of a property located at 119 Washington Avenue in Dunbar, West Virginia ("Washington Avenue Property").

51. At all times relevant to the allegations in this Complaint, the Washington Avenue Property was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. § 745.103.

52. At all times relevant to the allegations in this Complaint, the Washington Avenue Property was “target housing,” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

53. The contract for the lease of the Washington Avenue Property, dated May 16, 2007, did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). A Lead Warning Statement was included in a form later appended to such contract on June 10, 2008.

54. The contract for the lease of the Washington Avenue Property, dated May 16, 2007, did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 10, 2008.

55. The contract for the lease of the Washington Avenue Property, dated May 16, 2007, did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 10, 2008.

56. The contract for the lease of the Washington Avenue Property, dated May 16, 2007, did not include the Receipt of Information Statement required by 40 C.F.R.

§ 745.113(b)(4). A Receipt of Information Statement was included in a form later appended to such contract on June 10, 2008.

57. The contract for the lease of the Washington Avenue Property, dated May 16, 2007, did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). An Agent Statement was included in a form later appended to such contract on June 10, 2008.

58. The contract for the lease of the Washington Avenue Property, dated May 16, 2007, did not include the Certification of Accuracy required by 40 C.F.R.

§ 745.113(b)(6). A Certification of Accuracy was included in a form later appended to such contract on June 10, 2008.

59. Count 11: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

60. Count 12: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

61. Count 13: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

62. Count 14: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

63. Count 15: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

64. Count 16: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 17 – 22 (Mountain Road Property)

65. The allegations of Paragraphs 1 through 64 of this Complaint are incorporated herein by reference.

66. Respondent served as an “agent,” as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated May 31, 2007, for the lease of a property located at 1433 Mountain Road in Charleston, West Virginia (“Mountain Road Property”).

67. At all times relevant to the allegations in this Complaint, the Mountain Road Property was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. § 745.103.

68. At all times relevant to the allegations in this Complaint, the Mountain Road Property was “target housing,” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

69. The contract for the lease of the Mountain Road Property, dated May 31, 2007, did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008.

70. The contract for the lease of the Mountain Road Property, dated May 31, 2007, did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 19, 2008.

71. The contract for the lease of the Mountain Road Property, dated May 31, 2007, did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 19, 2008.

72. The contract for the lease of the Mountain Road Property, dated May 31, 2007, did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). A Receipt of Information Statement was included in a form later appended to such contract on June 19, 2008.

73. The contract for the lease of the Mountain Road Property, dated May 31, 2007, did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). An Agent Statement was included in a form later appended to such contract on June 19, 2008.

74. The contract for the lease of the Mountain Road Property, dated May 31, 2007, did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). A Certification of Accuracy was included in a form later appended to such contract on June 19, 2008.

75. Count 17: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

76. Count 18: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 31, 2007 contract for the lease of the

Mountain Road Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409; 15 U.S.C. § 2689.

77. Count 19: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

78. Count 20: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

79. Count 21: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

80. Count 22: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), constitutes a violation

of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 23 – 28 (Fourth Avenue Property)

81. The allegations of Paragraphs 1 through 80 of this Complaint are incorporated herein by reference.

82. Respondent served as an “agent,” as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated August 17, 2007, for the lease of a property located at 1422 Fourth Avenue in Charleston, West Virginia (“Fourth Avenue Property”).

83. At all times relevant to the allegations in this Complaint, the Fourth Avenue Property was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. § 745.103.

84. At all times relevant to the allegations in this Complaint, the Fourth Avenue Property was “target housing,” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

85. The contract for the lease of the Fourth Avenue Property, dated August 17, 2007, did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). A Lead Warning Statement was included in a form later appended to such contract on June 5, 2008.

86. The contract for the lease of the Fourth Avenue Property, dated August 17, 2007, did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). A

statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 5, 2008.

87. The contract for the lease of the Fourth Avenue Property, dated August 17, 2007, did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 5, 2008.

88. The contract for the lease of the Fourth Avenue Property, dated August 17, 2007, did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). A Receipt of Information Statement was included in a form later appended to such contract on June 5, 2008.

89. The contract for the lease of the Fourth Avenue Property, dated August 17, 2007, did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). An Agent Statement was included in a form later appended to such contract on June 5, 2008.

90. The contract for the lease of the Fourth Avenue Property, dated August 17, 2007, did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). A Certification of Accuracy was included in a form later appended to such contract on June 5, 2008.

91. Count 23: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

92. Count 24: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

93. Count 25: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

94. Count 26: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

95. Count 27: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

96. Count 28: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 29 – 34 (Gordon Drive Property)

97. The allegations of Paragraphs 1 through 96 of this Complaint are incorporated herein by reference.

98. Respondent served as an "agent," as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated September 14, 2007, for the lease of a property located at 649 Gordon Drive in Charleston, West Virginia ("Gordon Drive Property").

99. At all times relevant to the allegations in this Complaint, the Gordon Drive Property was housing constructed prior to 1978, and was neither "housing for the elderly" or persons with disabilities nor a "0-bedroom dwelling" as those terms are defined in 40 C.F.R. § 745.103.

100. At all times relevant to the allegations in this Complaint, the Gordon Drive Property was "target housing," within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

101. The contract for the lease of the Gordon Drive Property, dated September 14, 2007, did not include the Lead Warning Statement required by 40 C.F.R.

§ 745.113(b)(1). A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008.

102. The contract for the lease of the Gordon Drive Property, dated September 14, 2007, did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 19, 2008.

103. The contract for the lease of the Gordon Drive Property, dated September 14, 2007, did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 19, 2008.

104. The contract for the lease of the Gordon Drive Property, dated September 14, 2007, did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). A Receipt of Information Statement was included in a form later appended to such contract on June 19, 2008.

105. The contract for the lease of the Gordon Drive Property, dated September 14, 2007, did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). An Agent Statement was included in a form later appended to such contract on June 19, 2008.

106. The contract for the lease of the Gordon Drive Property, dated September 14, 2007, did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). A Certification of Accuracy was included in a form later appended to such contract on June 19, 2008.

107. Count 29: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

108. Count 30: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

109. Count 31: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

110. Count 32: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), constitutes a

violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

111. Count 33: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

112. Count 34: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 35 – 40 (Venable Avenue Property)

113. The allegations of Paragraphs 1 through 112 of this Complaint are incorporated herein by reference.

114. Respondent served as an "agent," as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated October 11, 2007, for the lease of a property located at 4614 Venable Avenue in Charleston, West Virginia ("Venable Avenue Property").

115. At all times relevant to the allegations in this Complaint, the Venable Avenue Property was housing constructed prior to 1978, and was neither "housing for the elderly" or persons with disabilities nor a "0-bedroom dwelling" as those terms are defined in 40 C.F.R. § 745.103.

116. At all times relevant to the allegations in this Complaint, the Venable Avenue Property was “target housing,” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

117. The contract for the lease of the Venable Avenue Property, dated October 11, 2007, did not include the Lead Warning Statement required by 40 C.F.R.

§ 745.113(b)(1). A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008.

118. The contract for the lease of the Venable Avenue Property, dated October 11, 2007, did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008.

119. The contract for the lease of the Venable Avenue Property, dated October 11, 2007, did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008.

120. The contract for the lease of the Venable Avenue Property, dated October 11, 2007, did not include the Receipt of Information Statement required by 40 C.F.R.

§ 745.113(b)(4). A Receipt of Information Statement was included in a form later appended to such contract on June 25, 2008.

121. The contract for the lease of the Venable Avenue Property, dated October 11, 2007, did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). The

form later appended to such contract on June 25, 2008 did not contain a signed Agent Statement.

122. The contract for the lease of the Venable Avenue Property, dated October 11, 2007, did not include the Certification of Accuracy required by 40 C.F.R.

§ 745.113(b)(6). A Certification of Accuracy was included in a form later appended to such contract on June 25, 2008.

123. Count 35: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

124. Count 36: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

125. Count 37: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), constitutes a violation of

RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

126. Count 38: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

127. Count 39: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

128. Count 40: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS 41 – 46 (Jones Avenue Property)

129. The allegations of Paragraphs 1 through 128 of this Complaint are incorporated herein by reference.

130. Respondent served as an “agent,” as that term is defined in 40 C.F.R. § 745.103, in a transaction, dated October 24, 2007, for the lease of a property located at 4308 Jones Avenue in South Charleston, West Virginia (“Jones Avenue Property”).

131. At all times relevant to the allegations in this Complaint, the Jones Avenue Property was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. § 745.103.

132. At all times relevant to the allegations in this Complaint, the Jones Avenue Property was “target housing,” within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

133. The contract for the lease of the Jones Avenue Property, dated October 24, 2007, did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008.

134. The contract for the lease of the Jones Avenue Property, dated October 24, 2007, did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 24, 2008.

135. The contract for the lease of the Jones Avenue Property, dated October 24, 2007, did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 24, 2008.

136. The contract for the lease of the Jones Avenue Property, dated October 24, 2007, did not include the Receipt of Information Statement required by 40 C.F.R.

§ 745.113(b)(4). A Receipt of Information Statement was included in a form later appended to such contract on June 24, 2008.

137. The contract for the lease of the Jones Avenue Property, dated October 24, 2007, did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). An Agent Statement was included in a form later appended to such contract on June 24, 2008.

138. The contract for the lease of the Jones Avenue Property, dated October 24, 2007, did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). A Certification of Accuracy was included in a form later appended to such contract on June 24, 2008.

139. Count 41: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

140. Count 42: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

141. Count 43: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

142. Count 44: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

143. Count 45: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

144. Count 46: Under 40 C.F.R. § 745.118(e), Respondent's failure to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

III. CIVIL PENALTY

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, in the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This amount has been adjusted under the *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19, and 40 C.F.R. § 745.118(f), which increase the maximum civil penalties which can be assessed by EPA under 42 U.S.C. § 4852d to \$11,000 for violations occurring on or after July 28, 1997.

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged 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 matters as justice may require ("statutory factors"). In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and EPA's *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy ("ERP")*, dated December 2007. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. See 40 C.F.R. § 22.19(a)(4). In calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts and

circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued.

This Complaint does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes the assessment of a civil penalty of up to \$11,000 against the Respondent for each violation alleged in this Complaint. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of violations is as follows:

Penalty Calculation Explanation

Circumstance Levels:

- A. Violations of 40 C.F.R. § 745.113(a)(4): Violations of the requirements set forth at 40 C.F.R. § 745.113(a)(4) are deemed to represent a "medium" probability of impairing a purchaser's ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. As a result, each of the violations alleged in Counts 1 and 3 of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.
- B. Violations of 40 C.F.R. § 745.113(a)(5): Violations of the requirements set forth at 40 C.F.R. § 745.113(a)(5) are deemed to represent a "medium" probability of impairing a purchaser's ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. As a result, each of the violations alleged in Counts

2 and 4 of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.

- C. Violations of 40 C.F.R. § 745.113(b)(1): Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(1) are deemed to represent a “high” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 2 violations in the ERP. As a result, each of the violations alleged in Counts 5, 11, 17, 23, 29, 35 and 41 of this Complaint may be characterized as Circumstance Level 2 violations for purposes of calculating an appropriate penalty.
- D. Violations of 40 C.F.R. § 745.113(b)(2): Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(2) are deemed to represent a “medium” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 3 violations in the ERP. As a result, each of the violations alleged in Counts 6, 12, 18, 24, 30, 36 and 42 of this Complaint may be characterized as Circumstance Level 3 violations for purposes of calculating an appropriate penalty.
- E. Violations of 40 C.F.R. § 745.113(b)(3): Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(3) are deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 5 violations in the ERP. As a result, each of the violations alleged in Counts

7, 13, 19, 25, 31, 37 and 43 of this Complaint may be characterized as Circumstance Level 5 violations for purposes of calculating an appropriate penalty.

- F. Violations of 40 C.F.R. § 745.113(b)(4): Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(4) are deemed to represent a “medium” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. As a result, each of the violations alleged in Counts 8, 14, 20, 26, 32, 38 and 44 of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.
- G. Violations of 40 C.F.R. § 745.113(b)(5): Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(5) are deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 5 violations in the ERP. As a result, each of the violations alleged in Counts 9, 15, 21, 27, 33, 39 and 45 of this Complaint may be characterized as Circumstance Level 5 violations for purposes of calculating an appropriate penalty.
- H. Violations of 40 C.F.R. § 745.113(b)(6): Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(6) are deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 6

violations in the ERP. As a result, each of the violations alleged in Counts 10, 16, 22, 28, 34, 40 and 46 of this Complaint may be characterized as Circumstance Level 6 violations for purposes of calculating an appropriate penalty.

Extent Levels:

At the present time Complainant does not have enough information to determine the extent levels for the violations, which are related to the risk of exposure to children and pregnant women. Complainant has not yet investigated whether or not children or pregnant women were living in any of the properties at issue. If, after discovery, it turns out that no children or pregnant women lived in the properties, then the violations would be assessed at a "minor" extent level.

In addition, EPA will consider other information received after the filing of this Complaint, including, among other factors, Respondent's ability to pay, to adjust the proposed civil penalty assessed in this Complaint. With respect to Respondent's ability to pay the proposed penalty, it is Respondent's responsibility to assert such a claim and provide to Complainant financial information to support and establish any such claim that Respondent is unable to pay the proposed penalty. To the extent that facts or circumstances, including, but not limited to, additional information concerning Respondent's ability to pay the proposed penalty that were unknown to Complainant at the time of the issuance of the Complaint become known to Complainant after issuance of the Complaint, such facts and circumstances may be considered as a basis for adjusting the civil penalty proposed in this Complaint.

IV. OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and the appropriateness of any penalty. **To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, *within thirty (30) days of receipt of this Complaint*, at the following address:**

**Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein without further proceedings.

Any hearing requested by Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

**Benjamin D. Fields
Senior Assistant Regional Counsel
Mail Code 3RC30
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029**

V. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **A request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer.**

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because a specific penalty is not proposed. *See* 40 C.F.R. § 22.18(a).

In the event settlement is reached, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest

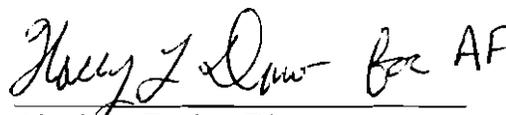
the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please contact Benjamin D. Fields, Senior Assistant Regional Counsel, at (215) 814-2629. Please note that a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional Counsel; U.S. EPA, Region III, Land and Chemicals Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of any Respondent on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 6/30/2010

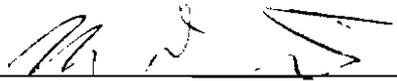

Abraham Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that on the date below I hand-delivered the original and one copy of the attached Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, and caused a true and correct copy to be sent via UPS Overnight to:

Bradley Pittman, President
Dobbins, Fisher & Pittman Associates, Inc.
d/b/a Dobbins, Fisher & Pittman Realtors
339 3rd Avenue
South Charleston, WV 25303

6/30/10
Date



Benjamin D. Fields
Senior Assistant Regional Counsel