



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Office of Regional Counsel
Waste and Chemical Law Branch
Mailcode: 3RC30

Direct dial: (215) 814-2474
Facsimile: (215) 814-2603
Email: thomas.donzetta@epa.gov

FedEx Overnight Delivery

Christopher Hamb
608 Virginia St., E#100
Charleston, WV 25301

SEP 15 2008

Re: Toxic Substances Control Act
Administrative Complaint and Notice of Opportunity for a Hearing
EPA Docket No. TSCA-03-2008-0386

Dear Mr. Hamb:

Enclosed is an Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint"), alleging violations of TSCA Section 409, 15 U.S.C. § 2689; the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851-4856, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F, against your client, Old Colony Company.

The Complaint is based upon information obtained by the U.S. Environmental Protection Agency ("EPA") through its own investigation as well as information gathered in response to a subpoena. You should carefully review the Complaint to determine the various options available to your client in responding to the alleged violations.

Unless you elect to resolve this proceeding as set forth in the Complaint, an Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint by specific Answer within 30 days of your receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalty proposed in the Complaint without further proceedings.

In your Answer, you may choose to request a hearing to contest any matter set forth in the Complaint. Whether or not a hearing is requested, you may request an informal settlement conference to negotiate a resolution of this case. A settlement conference may be requested in the Answer or by contacting the attorney listed below:

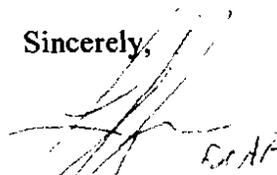
Customer Service Hotline: 1-800-438-2474

Donzetta W. Thomas
Senior Assistant Regional Counsel (3RC30)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Ms. Thomas can be contacted by telephone at (215) 814-2474.

Old Colony Company may be classified as a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). Please see the Information Sheet enclosed with this letter. The Information Sheet provides information on contacting the Small Business Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in EPA's small business program or to seek compliance assistance will not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement actions.

Sincerely,



Abraham Ferdas, Director
Land and Chemicals Division

Enclosures

1. 40 C.F.R. Part 22
2. Section 1018 Disclosure Rule Enforcement Response Policy
3. Small Business Compliance Policy

cc: Regional Hearing Clerk (3RC00) complaint only
Kyle Chelius, complaint only

**ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**OLD COLONY COMPANY
1205 Virginia Street, E
Charleston, WV 25301**

Respondent.

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Docket No. TSCA-03-2008-0386

**ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY
FOR A HEARING ISSUED PURSUANT TO SECTION 16(a) OF THE
TOXIC SUBSTANCES CONTROL ACT ("TSCA"), 15 U.S.C. § 2615(a)**

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 Notice R-08-01, dated July 21, 2008, and as further explained in EPA Region III Delegation No. 12-2-A, dated August 26, 2002.

The Respondent in this action is Old Colony Company. 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 25 sales agreements associated with 24 different target housing units, described more fully in Paragraph 18 of this Complaint.

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 its Complaint, Complainant alleges the following:

I. JURISDICTION

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.

II. DEFINITIONS AND REGULATORY REQUIREMENTS

2. Pursuant to 40 C.F.R. § 745.103, the term “agent” means, in pertinent 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.”
3. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint” means, “paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm²] or 0.5 percent by weight.”
4. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint hazard” means “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.”
5. Pursuant to 40 C.F.R. § 745.103, the term “Purchaser” means “an entity that enters into an Agreement to purchase an interest in target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.”
6. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means: “(1) A single-family dwelling, including attached structures such as porches and stoops; or (2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.”
7. Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. § 4851b(24), and TSCA Section 401(15), 15 U.S.C. § 2681(15), the term “residential real property” means “real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.”
8. 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.”

9. 40 C.F.R. § 745.115(a) provides, in pertinent part, that: “[e]ach agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall: . . . (2) 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.”
10. 40 C.F.R. § 745.113(a)(1) provides that each contract to sell target housing shall include as an attachment a “Lead Warning Statement consisting of the following language: Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead Poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any know lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.”
11. 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”
12. 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.”
13. 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 [hereinafter, “Receipt of Information 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. 2686.”

14. 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 [hereinafter “Risk Assessment Statement”] 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.”
15. 40 C.F.R. § 745.113(a)(6) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “[w]hen one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement [hereinafter the “Agent’s Statement”] that:
 - i. The agent has informed the seller of the seller’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 this subpart.”
16. 40 C.F.R. § 745.113(a)(7) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signatures.”
17. Enforcement, 40 C.F.R. § 745.118 provides, in pertinent part, that
 - i. Failure or refusal to comply with . . . § 745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA Section 409 (15 U.S.C. 2689).
 - ii. Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall not be more than \$11,000 for all violations occurring after July 28, 1997; all violations occurring on or prior to that date are subject to a penalty not more than \$10,000.”

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. The following 24 properties are and, at all times relevant to the violations alleged herein, “target housing” as defined at RLBPHRA Section 1004(27), TSCA Section 401(17) and 40 C.F.R. § 745.103: 1520 Quarrier Street, Charleston, WV; 1819 Loudon Heights Circle, Charleston, WV; HC 87 Winifrede Hollow Road, Belle, WV; 149 Oakwood Estates, Scott Depot, WV; 691 Forest Circle, South Charleston, WV; 1522 Valley Drive, South Charleston, WV; 2107 Stratford Road, South Charleston, WV; 2635 Montana Avenue, Hurricane, WV; 905 Amhurst Drive, Charleston, WV; 105 Sunny Brook Drive, St. Albans, WV; 465 Riverbend, St. Albans, WV; 2004 Northwood Road, Charleston, WV; 258 Cane Hill Road, Buffalo, WV; 1908 Morecott Addition, Sissonville, WV; 275 of Block G of Edgewood, Charleston, WV; 849 Somerset Drive, Charleston, WV; 1515 Brentwood Road, Charleston, WV; 102 Grady Street, Chelyan, WV; 1562 Quarrier Street, Charleston, WV; 838 Lower Chester Road, Charleston, WV; 425 Montrose Drive, South Charleston, WV; 817 Somerset Drive, Charlestown, WV; 3904 Staunton Avenue, Charlestown, WV; and 301 Mulberry Street, Ravenswood, WV (collectively, “24 Target Housing Properties”) as outlined below:

<u>Counts</u>	<u>Sales Transaction #</u>	<u>Address of Target Housing</u>	<u>Date</u>
1, 9, 20, 33, 47, 65, 80	1	1520 Quarrier Street, Charleston, WV	4-14-04
2, 10, 21, 34, 48, 66, 81	2	1819 Loudon Heights Circle, Charleston, WV	8-06-04
3, 11, 22, 35, 49, 67, 82	3	HC 87 Winifrede Hollow Road, Belle, WV	8-06-04
4, 12, 23, 36, 50, 68, 83	4	149 Oakwood Estates, Scott Depot, WV	4-22-04
5, 13, 24, 37, 51, 69	5	691 Forest Circle, South Charleston, WV	12-27-05
6, 14, 25, 38, 52, 70	6	1522 Valley Drive, South Charleston, WV	4-14-06
7, 15, 26, 39, 53, 71, 84	7	2107 Stratford Road, South Charleston, WV	1-30-04
8, 15, 27, 40, 54, 72, 85	8	2635 Montana Avenue, Hurricane, WV	6-14-04
17, 28, 55, 73	9	905 Amhurst Drive, Charleston, WV	11-16-04

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18, 29, 86	10	105 Sunny Brook Drive, St. Albans, WV (#1)	1-26-04
19, 30, 41, 56	11	465 Riverbend, St. Albans, WV	1-13-05
31, 42, 57, 74	12	2004 Northwood Road, Charleston, WV	8-29-03
32, 58	13	258 Cane Hill Road, Buffalo, WV	9-05-05
43, 59, 87	14	1908 Morecott Addition, Sissonville, WV	10-05-04
44, 60	15	275 of Block Q of Edgewood, Charleston, WV	3-16-05
45, 61	16	849 Somerset Drive, Charleston, WV	6-10-2005
46, 62, 75	17	1515 Brentwood Road, Charleston, WV	1-07-06
63, 88	18	102 Grady Street, Chelyan, WV	6-14-05
64, 89	19	1562 Quarrier Street, Charleston, WV	4-27-05
76	20	838 Lower Chester Road, Charleston, WV	8-14-03
77	21	425 Montrose Drive, South Charleston, WV	10-29-03
78	22	105 Sunny Brook Drive, St. Albans, WV (#2)	3-11-05
79	23	817 Somerset Drive, Charleston, WV	9-16-03
90	24	3904 Staunton Avenue, Charleston, WV	6-13-04
91	25	301 Mulberry Street, Ravenswood, WV	3-03-04

19. At all times relevant to the violations alleged herein, the each of the "24 Target Housing Properties" consisted of real property on which there was situated one building used as the home or residence for one or more persons.

20. At all times relevant to the violations alleged herein, the building situated on the real property located at each of the "24 Target Housing Properties" was housing constructed prior to 1978.

21. At all times relevant to the violations alleged herein, the building situated on the real property located each of the "24 Target Housing Properties" consisted of housing and was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as provided in 40 C.F.R. § 745.103.
22. At all times relevant to the violations alleged herein, the building situated on the real property located at each of the "24 Target Housing Properties" contained a "residential dwelling" and was "target housing" within the meaning of RLBPHRA Section 1004(23) and (27), 42 U.S.C. § 4851b(23) and (27), TSCA Section 401(14) and (17), 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.

The 1520 Quarrier Street Target Housing (Sales Transaction #1)

23. Respondent entered into an agency agreement, dated April 12, 2004 ("the 1520 Quarrier Street Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 1520 Quarrier Street, Charleston, WV (hereinafter the "1520 Quarrier Street Target Housing"), for the purpose of selling the 1520 Quarrier Street Target Housing.
24. Respondent, on behalf of the Seller, entered into a written contract, dated April 17, 2004 (hereinafter referred to as "Sales Transaction #1"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of renting or selling the 1520 Quarrier Street Target Housing.
25. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 1520 Quarrier Street Target Housing.
26. Sales Transaction # 1 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 1819 Loudon Heights Circle Target Housing (Sales Transaction #2)

27. Respondent entered into an agency agreement, dated May 30, 2004 and June 12, 2004 ("the 1819 Loudon Heights Circle Notice of Agency Agreements"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 1819 Loudon Heights Circle, WV (hereinafter the "1819 Loudon Heights Circle Target Housing"), for the purpose of selling the 1819 Loudon Heights Circle Target Housing.
28. Respondent, on behalf of the Seller, entered into a written contract, dated August 6, 2004 (hereinafter referred to as "Sales Transaction #2"), with a "Purchaser," as that term is

defined at 40 C.F.R. Section 745.103, for the purpose of renting or selling the 1819 Louden Heights Circle Target Housing.

29. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 1819 Louden Heights Circle Target Housing.

30. Sales Transaction # 2 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The HC 87 Winifrede Hollow Road Target Housing (Sales Transaction #3)

31. Respondent entered into an agency agreement, dated August 8, 2004 ("the HC 87 Winifrede Hollow Road Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at HC 87 Winifrede Hollow Road, Belle, WV (hereinafter the "HC 87 Winifrede Hollow Road Target Housing"), for the purpose of selling the HC 87 Winifrede Hollow Road Target Housing.

32. Respondent, on behalf of the Seller, entered into a written contract, dated August 6, 2004 (hereinafter referred to as "Sales Transaction #3"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the HC 87 Winifrede Hollow Road Target Housing.

33. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the HC 87 Winifrede Hollow Road Target Housing.

34. Sales Transaction # 3 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 149 Oakwood Estates Target Housing (Sales Transaction #4)

35. Respondent entered into an agency agreement, dated March 10, 2004 ("the 149 Oakwood Estates Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 149 Oakwood Estates, Scott Depot, WV (hereinafter the "149 Oakwood Estates Target Housing"), for the purpose of selling the 149 Oakwood Estates Target Housing.

36. Respondent, on behalf of the Seller, entered into a written contract, dated April 22, 2004 (hereinafter referred to as "Sales Transaction #4"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 149 Oakwood Estates

Target Housing.

37. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 149 Oakwood Estates Target Housing.

38. Sales Transaction #4 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 691 Forest Circle Target Housing (Sales Transaction #5)

39. Respondent entered into an agency agreement, dated November 17, 2004 ("the 691 Forest Circle Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 691 Forest Circle, South Charleston, WV (hereinafter the "691 Forest Circle Target Housing"), for the purpose of selling the 691 Forest Circle Target Housing.

40. Respondent on behalf of the Seller, entered into a written contract, dated December 27, 2005 (hereinafter referred to as "Sales Transaction #5"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 691 Forest Circle Target Housing.

41. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 691 Forest Circle Target Housing.

42. Sales Transaction #5 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 1522 Valley Drive Target Housing (Sales Transaction #6)

43. Respondent entered into an agency agreement, dated March 31, 2006 ("the 1522 Valley Drive Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 1522 Valley Drive, South Charleston, WV (hereinafter the "1522 Valley Drive Target Housing"), for the purpose of selling the 1522 Valley Drive Target Housing.

44. Respondent on behalf of the Seller, entered into a written contract, dated April 17, 2006 (hereinafter referred to as "Sales Transaction #6"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 1522 Valley Drive Target Housing.

45. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 1522 Valley Drive Target Housing.

46. Sales Transaction #6 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 2107 Stratford Road Target Housing (Sales Transaction # 7)

47. Respondent entered into an agency agreement, dated December 2, 2003 ("the 2107 Stratford Road Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 2107 Stratford Road, South Charleston, WV (hereinafter the "2107 Stratford Road Target Housing"), for the purpose of selling the 2107 Stratford Road Target Housing.

48. Respondent on behalf of the Seller, entered into a written contract, dated January 30, 2004 (hereinafter referred to as "Sales Transaction #7"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 2107 Stratford Road Target Housing.

49. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 2107 Stratford Road Target Housing.

50. Sales Transaction #7 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 2635 Montana Avenue Target Housing (Sales Transaction # 8)

51. Respondent entered into an agency agreement, dated March 25, 2004 ("the 2635 Montana Avenue Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 2635 Montana Avenue, Hurricane, WV (hereinafter the "2635 Montana Avenue Target Housing"), for the purpose of selling the 2635 Montana Avenue Target Housing.

52. Respondent on behalf of the Seller, entered into a written contract, dated June 14, 2004 (hereinafter referred to as "Sales Transaction #8"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 2635 Montana Avenue Target Housing.

53. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the

Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 2635 Montana Avenue Target Housing.

54. Sales Transaction #8 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 905 Amhurst Drive Target Housing (Sales Transaction # 9)

55. Respondent entered into an agency agreement, dated February 27, 2004 and September 20, 2004 (“the 905 Amhurst Drive Notice of Agency Agreements”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) of the “target housing” located at 905 Amhurst Drive, Charleston, WV (hereinafter the “905 Amhurst Drive Target Housing”), for the purpose of selling the 905 Amhurst Drive Target Housing.

56. Respondent, on behalf of the Seller, entered into a written contract, dated November 16, 2004 (hereinafter referred to as “Sales Transaction #9”), with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 905 Amhurst Drive Target Housing.

57. At all times relevant to the violations alleged herein, Respondent was an “Agent” of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 905 Amhurst Drive Target Housing.

58. Sales Transaction # 9 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 105 Sunny Brook Drive Target Housing (Sales Transactions #10 and #22)

59. Respondent entered into an agency agreement, dated November 11, 2003 and March 10, 2005 (“the 105 Sunny Brook Drive Notice of Agency Agreements”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) of the “target housing” located at 105 Sunny Brook Drive, St. Albans, WV (hereinafter the “105 Sunny Brook Drive Target Housing”), for the purpose of selling the 105 Sunny Brook Drive Target Housing.

60. Respondent, on behalf of the Seller, entered into a written contract, dated January 26, 2004 (hereinafter referred to as “Sales Transaction #10”), with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 105 Sunny Brook Drive Target Housing.

61. Respondent, on behalf of the Seller, entered into a written contract, dated March 11, 2005 (hereinafter referred to as “Sales Transaction #22”), with a “Purchaser,” as that term is

defined at 40 C.F.R. Section 745.103, for the purpose of selling the 105 Sunny Brook Drive Target Housing.

62. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 105 Sunny Brook Drive Target Housing.

63. Sales Transactions # 10 and 22 were not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 465 Riverbend Street Target Housing (Sales Transaction #11)

64. Respondent entered into an agency agreement, dated January 13, 2005 ("the 465 Riverbend Street Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 465 Riverbend Street, Albans, WV (hereinafter the "465 Riverbend Street Target Housing"), for the purpose of selling the 465 Riverbend Street Target Housing.

65. Respondent on behalf of the Seller, entered into a written contract, dated January 13, 2005 (hereinafter referred to as "Sales Transaction #11"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 465 Riverbend Street Target Housing.

66. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 465 Riverbend Street Target Housing.

67. Sales Transaction #11 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 2004 Northwood Road Target Housing (Sales Transaction #12)

68. Respondent entered into an agency agreement, dated August 26, 2003 (the "2004 Northwood Road Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 2004 Northwood Road, Charleston, WV (hereinafter the "2004 Northwood Road Target Housing"), for the purpose of selling the 2004 Northwood Road Target Housing.

69. Respondent, on behalf of the Seller, entered into a written contract, dated August 29, 2003 (hereinafter referred to as "Sales Transaction #12"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 2004 Northwood

Road Target Housing.

70. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 2004 Northwood Road Target Housing.

71. Sales Transaction #12 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 258 Cane Hill Road Target Housing (Sales Transaction #13)

72. Respondent entered into an agency agreement, dated September 4, 2005 ("the 258 Cane Hill Road Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 258 Cane Hill Road, Buffalo, WV (hereinafter the "258 Cane Hill Road Target Housing"), for the purpose of selling the 258 Cane Hill Road Target Housing.

73. Respondent on behalf of the Seller, entered into a written contract, dated September 5, 2005 (hereinafter referred to as "Sales Transaction #13"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 258 Cane Hill Road Target Housing.

74. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 258 Cane Hill Road Target Housing.

75. Sales Transaction #13 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 1908 Morecott Addition Target Housing (Sales Transaction #14)

76. Respondent entered into an agency agreement, dated November 6, 2003 ("the 1908 Morecott Addition Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 1908 Morecott Addition, Sissonville, WV (hereinafter the "1908 Morecott Addition Target Housing"), for the purpose of selling the 1908 Morecott Addition Target Housing.

77. Respondent, on behalf of the Seller, entered into a written contract, dated October 5, 2004 (hereinafter referred to as "Sales Transaction #14"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 1908 Morecott Addition Target Housing.

78. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 1908 Morecott Addition Target Housing.

79. Sales Transaction # 14 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 275 of Block Q of Edgewood Target Housing (Sales Transaction #15)

80. Respondent entered into an agency agreement, dated January 9, 2005 and March 17, 2005 ("the 275 of Block Q of Edgewood Notice of Agency Agreements"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 275 of Block Q of Edgewood, Charleston, WV (hereinafter the "275 of Block Q of Edgewood Target Housing"), for the purpose of selling the 275 of Block Q of Edgewood Target Housing.

81. Respondent, on behalf of the Seller, entered into a written contract, dated March 16, 2005 (hereinafter referred to as "Sales Transaction #15"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 275 of Block Q of Edgewood Target Housing.

82. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 275 of Block Q of Edgewood Target Housing.

83. Sales Transaction #15 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 849 Somerset Drive Target Housing (Sales Transaction # 16)

84. Respondent entered into an agency agreement, dated March 13, 2005 and April 10, 2005 ("the 849 Somerset Drive Notice of Agency Agreements"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 849 Somerset Drive, Charleston, WV (hereinafter the "849 Somerset Drive Target Housing"), for the purpose of selling the 849 Somerset Drive Target Housing.

85. Respondent on behalf of the Seller, entered into a written contract, dated June 10, 2005 (hereinafter referred to as "Sales Transaction #16"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 849 Somerset Drive Target Housing.

86. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 849 Somerset Drive Target Housing.

87. Sales Transaction #16 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 1515 Brentwood Road Target Housing (Sales Transaction #17)

88. Respondent entered into an agency agreement, dated January 7, 2006 ("the 1515 Brentwood Road Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 1515 Brentwood Road, Charleston, WV (hereinafter the "1515 Brentwood Road Target Housing"), for the purpose of selling the 1515 Brentwood Road Target Housing.

89. Respondent on behalf of the Seller, entered into a written contract, dated January 7, 2006 (hereinafter referred to as "Sales Transaction #17"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 1515 Brentwood Road Target Housing.

90. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 1515 Brentwood Road Target Housing.

91. Sales Transaction #17 was not "a sale of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a).

The 102 Grady Street Target Housing (Sales Transaction #18)

92. Respondent entered into an agency agreement, dated June 14, 2005 ("the 102 Grady Street Notice of Agency Agreement"), with the "Seller" (as that term is defined at 40 C.F.R. § 745.103) of the "target housing" located at 102 Grady Street, Chelyan, WV (hereinafter the "102 Grady Street Target Housing"), for the purpose of selling the 102 Grady Street Target Housing.

93. Respondent, on behalf of the Seller, entered into a written contract, dated June 14, 2005 (hereinafter referred to as "Sales Transaction #18"), with a "Purchaser," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 102 Grady Street Target Housing.

94. At all times relevant to the violations alleged herein, Respondent was an "Agent" of the

Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 102 Grady Street Target Housing.

95. Sales Transaction #18 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 1562 Quarrier Street Target Housing (Sales Transaction #19)

96. Respondent entered into an agency agreement, dated April 25, 2005 and April 27, 2005 (“the 1562 Quarrier Street Notice of Agency Agreements”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) of the “target housing” located at 1562 Quarrier Street, Charleston, WV (hereinafter the “1562 Quarrier Street Target Housing”), for the purpose of selling the 1562 Quarrier Street Target Housing.

97. Respondent on behalf of the Seller, entered into a written contract, dated April 27, 2005 (hereinafter referred to as “Sales Transaction #19”), with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 1562 Quarrier Street Target Housing.

98. At all times relevant to the violations alleged herein, Respondent was an “Agent” of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 1562 Quarrier Street Target Housing.

99. Sales Transaction #19 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 838 Lower Chester Road Target Housing (Sales Transaction #20)

100. Respondent entered into an agency agreement, dated April 7, 2003 and September 14, 2003 (“the 838 Lower Chester Road Notice of Agency Agreements”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) of the “target housing” located at 838 Lower Chester Road, Charleston, WV (hereinafter the “838 Lower Chester Road Target Housing”), for the purpose of selling the 838 Lower Chester Road Target Housing.

101. Respondent, on behalf of the Seller, entered into a written contract, dated August 14, 2003 (hereinafter referred to as “Sales Transaction #20”), with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 838 Lower Chester Road Target Housing.

102. At all times relevant to the violations alleged herein, Respondent was an “Agent” of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 838 Lower Chester

Road Target Housing.

103. Sales Transaction #20 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 425 Montrose Drive Target Housing (Sales Transaction #21)

104. Respondent entered into an agency agreement, dated October 29, 2003 (“the 425 Montrose Drive Notice of Agency Agreement”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) for the “target housing” located at 425 Montrose Drive, South Charleston, WV, (hereinafter the “425 Montrose Drive Target Housing”), for the purpose of selling the 425 Montrose Drive Target Housing.
105. Respondent, on behalf of the Seller, entered into a written contract, dated October 29, 2003 (hereinafter referred to as “Sales Transaction #21”) with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, to sell the 425 Montrose Drive Target Housing.
106. At all times relevant to the violations alleged herein, Respondent was an “Agent” of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 425 Montrose Drive Target Housing.
107. Sales Transaction #21 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 817 Somerset Drive Target Housing (Sales Transaction #23)

108. Respondent entered into an agency agreement, dated September 16, 2003 (“the 817 Somerset Drive Notice of Agency Agreement”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) of the “target housing” located at 817 Somerset Drive, Charleston, WV (hereinafter the “817 Somerset Drive Target Housing”), for the purpose of selling the 817 Somerset Drive Target Housing.
109. Respondent on behalf of the Seller, entered into a written contract, dated September 16, 2003 (hereinafter referred to as “Sales Transaction #23”), with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 817 Somerset Drive Target Housing.
110. At all times relevant to the violations alleged herein, Respondent was an “Agent” of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 817 Somerset Drive Target Housing.

111. Sales Transaction #23 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 3904 Staunton Avenue Target Housing (Sales Transaction #24)

112. Respondent entered into an agency agreement, dated June 8, 1986 (“the 3904 Staunton Avenue Notice of Agency Agreement”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) of the “target housing” located at 3904 Staunton Avenue, Charleston, WV (hereinafter the “3904 Staunton Avenue Target Housing”), for the purpose of selling the 3904 Staunton Avenue Target Housing.

113. Respondent, on behalf of the Seller, entered into a written contract, dated June 13, 2004 (hereinafter referred to as “Sales Transaction #24”), with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 3904 Staunton Avenue Target Housing.

114. At all times relevant to the violations alleged herein, Respondent was an “Agent” of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 3904 Staunton Avenue Target Housing.

115. Sales Transaction # 24 was not “a sale of target housing at foreclosure,” as provided at 40 C.F.R. § 745.101(a).

The 301 Mulberry Street Target Housing (Sales Transaction #25)

116. Respondent entered into an agency agreement, dated March 1, 2004 (“the 301 Mulberry Street Notice of Agency Agreement”), with the “Seller” (as that term is defined at 40 C.F.R. § 745.103) of the “target housing” located at 301 Mulberry Street, Ravenswood, WV (hereinafter the “301 Mulberry Street Target Housing”), for the purpose of selling the 301 Mulberry Street Target Housing.

117. Respondent on behalf of the Seller, entered into a written contract, dated March 3, 2004 (hereinafter referred to as “Sales Transaction #25”), with a “Purchaser,” as that term is defined at 40 C.F.R. Section 745.103, for the purpose of selling the 301 Mulberry Street Target Housing.

118. At all times relevant to the violations alleged herein, Respondent was an “Agent” of the Seller within the meaning of 40 C.F.R. § 745.103, with respect to the 301 Mulberry Street Target Housing.

119. Sales Transaction #25 was not “a sale of target housing at foreclosure,” as provided at 40

C.F.R. § 745.101(a).

IV. VIOLATIONS

Counts 1 - 8

**(Violation of 40 C.F.R. § 745.113(a)(1) In Relation To
Sales Transactions 1 - 8)**

120. The allegations contained in Paragraphs 1 through 119, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
121. Respondent did not ensure that a “Lead Warning Statement” containing the language set forth in, and required by, 40 C.F.R. § 745.113(a)(1) was included as an attachment to Sales Transactions 1 - 8, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(1).
122. Pursuant to 40 C.F.R. § 745.118(e), Respondent’s failure to ensure that a “Lead Warning Statement” containing the language set forth in 40 C.F.R. § 745.113(a)(1) was included as an attachment to, Sales Transactions 1 - 8, constitutes 8 separate violations of the RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.
123. Pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), Respondent’s failure to ensure that a “Lead Warning Statement” containing the language set forth in 40 C.F.R. § 745.113(a)(1) was attached to, Sales Transactions 1 - 8, constitutes 8 separate prohibited acts under TSCA Section 409, 15 U.S.C. § 2689.

Counts 9 - 19

**(Violation of 40 C.F.R. § 745.113(a)(2) In Relation To
Sales Transactions 1-11)**

124. The allegations contained in Paragraphs 1 through 123, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
125. Respondent failed to ensure that Sales Transactions 1-11 included, as an attachment, a statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. §§ 745.115(a)(2) and 745.113(a)(2).
126. Pursuant to 40 C.F.R. § 745.118(e), Respondent’s failure to ensure that Sales Transactions 1-11 included, as an attachment, a statement by the seller disclosing the

presence of known lead-based paint and/or lead-based paint hazards, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, constitutes 11 separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

127. Pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), Respondent's failure to ensure that Sales Transactions 1-11 included, as an attachment, a statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, constitutes 11 separate prohibited acts under TSCA Section 409, 15 U.S.C. § 2689.

Counts 20 - 32

(Violation of 40 C.F.R. § 745.113(a)(3) In Relation to
Sales Transactions 1-13)

128. The allegations contained in Paragraphs 1 through 127, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
129. Respondent failed to ensure that Sales Transactions 1-13 included, as an attachment, a list of records or reports available to the seller that pertain to the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or to indicate that no such records were available as required by 40 C.F.R. § 745.113(a)(3).
130. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to ensure that Sales Transactions 1-13 included, as an attachment, a list of records or reports available to the seller that pertain to the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or to indicate that no such records were available constitutes 13 separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.
131. Pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), Respondent's failure to ensure that Sales Transactions 1-13 included, as an attachment, a list of records or reports available to the seller that pertain to the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or to indicate that no such records were available constitutes 13 separate prohibited acts under TSCA Section 409, 15 U.S.C. § 2689.

Counts 33 - 46

(Violation of 40 C.F.R. § 745.113(a)(4) In Relation to
Sales Transactions 1-8, 11, 12, and 14-17)

132. The allegations contained in Paragraphs 1 through 131, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
133. Respondent failed to ensure that the "Receipt of Information Statement" was included as an attachment to Sales Transactions 1-8, 11, 12, and 14-17, as required by 40 C.F.R. § 745.113(a)(4).
134. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to ensure that the "Receipt of Information Statement" was included as an attachment to Sales Transactions 1-8, 11, 12, and 14-17, constitutes 14 separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.
135. Pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), Respondent's failure to ensure that the "Receipt of Information Statement" was included as an attachment to Sales Transactions 1-8, 11, 12, and 14-17 constitutes 14 separate prohibited acts under TSCA Section 409, 15 U.S.C. § 2689.

Counts 47 - 64

(Violation of 40 C.F.R. § 745.113(a)(5) In Relation to
Sales Transactions 1-9, and 11-19)

136. The allegations contained in Paragraphs 1 through 135, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
137. Respondent failed to ensure that the "Risk Assessment Statement" was included as an attachment to Sales Transactions 1-9, and 11-19, as required by 40 C.F.R. § 745.113(a)(5).
138. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to ensure that the "Risk Assessment Statement" was included as an attachment to Sales Transactions 1-9, and 11-19, constitutes 18 separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.
139. Pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), Respondent's failure to ensure that the "Risk Assessment Statement" was included as an attachment to Sales Transactions 1-9, and 11-19 constitutes 18 separate prohibited acts under TSCA Section 409, 15 U.S.C. § 2689.

Counts 65 - 79

(Violation of 40 C.F.R. § 745.113(a)(6) In Relation to
Sales Transactions 1-9, 12, 17, and 20-23)

140. The allegations contained in Paragraphs 1 through 139 above, of this Complaint are incorporated by reference herein as though fully set forth at length.
141. Respondent failed to ensure that the "Agent's Statement" was included as an attachment to Sales Transactions 1-9, 12, 17, and 20-23, as required by 40 C.F.R. § 745.113(a)(6).
142. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to ensure that the "Agent's Statement" was included as an attachment to Sales Transactions 1-9, 12, 17, and 20-23, constitutes 15 separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.
143. Pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), Respondent's failure to ensure that the "Agent's Statement" was included as an attachment to Sales Transactions 1-9, 12, 17, and 20-23 constitutes 15 separate prohibited acts under TSCA Section 409, 15 U.S.C. § 2689.

Counts 80 - 91

(Violation of 40 C.F.R. § 745.113(a)(7) In Relation to
Sales Transactions 1-4, 7, 8, 10, 14, 18, 19, 24, and 25)

144. The allegations contained in Paragraphs 1 through 143, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
145. Respondent failed to ensure that the attachments to Sales Transactions 1-4, 7, 8, 10, 14, 18, 19, 24, and 25 included signature along with dates, certifying to the accuracy of the statements made in the attachments as required by 40 C.F.R. § 745.113(a)(7).
146. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to ensure that the attachments to Sales Transactions 1-4, 7, 8, 10, 14, 18, 19, 24, and 25 included signatures along with dates, certifying to the accuracy of the statements made in the attachments, constitutes 12 separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.
147. Pursuant to RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), Respondent's failure to ensure that the attachments to Sales Transaction 1-4, 7, 8, 10, 14, 18, 19, 24, and 25 included signature along with dates, certifying to the accuracy of the statements made in the attachments, constitutes 12 separate prohibited acts under TSCA Section 409, 15 U.S.C. § 2689.

IV. CIVIL PENALTY

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f) authorize 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 to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, which increases the civil penalties which can be assessed by EPA under TSCA by 10% for violations occurring on or after July 28, 1997 and before March 15, 2004.

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). As a basis for 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.

The penalty to be proposed 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:

1. Penalty Calculation Explanation

1. Circumstance Levels:

- a) 40 C.F.R. § 745.113(a)(1) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(a)(1) are deemed to represent a “high” level of

impairment to a purchaser's ability to assess the information required to be disclosed and have been characterized as Circumstance Level 2 violations in the ERP. As a result, each of the violations alleged in Counts 1 - 8 of this Complaint may be characterized as Circumstance Level 2 violations for purposes of calculating an appropriate penalty.

- b) 40 C.F.R. § 745.113(a)(2) violations: Violations of the disclosure requirements set at 40 C.F.R. § 745.113(a)(2) are deemed to represent a "medium" level of impairment to a purchaser'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 9 -19 of this Complaint may be characterized as Circumstance Level 3 violations for purposes of calculating an appropriate penalty.
- c) 40 C.F.R. § 745.113(a)(3) and (6) violations: Violations of the requirements set forth at 40 C.F.R. § 745.113(a)(3) and (6) are deemed to represent a "low" level of impairment to a purchaser's ability to assess the information required to be disclosed and are each characterized as Circumstance Level 5. As a result, each of the violations alleged in Counts 20 - 32 and Counts 65 - 79, respectively, of this Complaint may be characterized as Circumstance Level 5 violations for purposes of calculating an appropriate penalty.
- d) 40 C.F.R. § 745.113(a)(4) and (5) violations: Violations of the disclosure requirements set at 40 C.F.R. § 745.113(a)(4) and (5) are deemed to represent a "medium" level of impairment to 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 33 - 46 and Counts 47 - 64, respectively, of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.
- e) 40 C.F.R. § 745.113(a)(7) violations: Violations of the requirements set forth at 40 C.F.R. § 745.113(a)(7) are deemed to represent a "low" level of impairment to a purchaser's ability to assess the information required to be disclosed and are characterized as Circumstance Level 6. As a result, each of the violations alleged in Counts 80 - 91 of this Complaint may be characterized as Circumstance Level 6 violations for purposes of calculating an appropriate penalty.

2. Extent Levels:

- a) Minor Violations: Defined as "[p]otential for a 'lesser' amount of damage to

human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees where no children or pregnant women live in the target housing is considered a “Minor Extent” violation under the ERP. Respondent failed to provide disclosures and/or certifications in 25 different Sales Transactions to purchasers where no children or pregnant women are present. Accordingly, the all of the violations associated with the 25 Sales Transactions, for a total of 91 violations are “Minor Extent” violations.

In addition, EPA will consider, 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 provide to Complainant financial information to support and establish any claim by Respondent of an inability 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.

QUICK RESOLUTION

In accordance with the Consolidated Rules of Practice at 40 C.F.R. § 22.14(a)(4)(ii), EPA has not demanded a specific penalty in this Complaint. Complainant will file in this proceeding a document specifying a proposed penalty within fifteen (15) days after Respondent files its prehearing information exchange as provided in the Consolidated Rules of Practice at 40 C.F.R. § 22.19(a)(4). Thereafter, in accordance with the Consolidated Rules of Practice, 40 C.F.R. §22.18(A), Respondent may resolve this proceeding at any time by paying the specific penalty which will be proposed in Complainant’s prehearing exchange, in full, as specified below and filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. Payment of the full penalty in accordance with this paragraph shall be made by mailing a certified or cashier’s check or by electronic funds transfer (“EFT”), payable to the “**Treasurer, United States of America,**” to the address shown below:

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

Overnight deliveries shall be sent to:

U.S. Environmental Protection Agency

Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314-418-4087)

For EFT (electronic funds transfer):

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express)

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074
Contact for ACH: Jessie White 301 887-6548

On-line Payments (bank account, credit card, debit card)

Go to www.pay.gov
Within the search field enter: sfo 1.1
Open the form and complete the required fields

To ensure proper crediting of the payment, it must reference the paying Respondent's name and address and the EPA Docket Number (TSCA-03-2008-0386) of this Complaint. A notice of payment, including a copy of the check or documentation of electronic wire transfer, shall be sent

simultaneously to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and to Donzetta W. Thomas (3RC30), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Upon receipt of payment in full in accordance with Section 22.18(a)(3) of the Consolidated Rules of Practice, the Regional Administrator, or his designee, shall issue a Final Order to the settling Respondent. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations in the Complaint and to appeal the Final Order.

NOTICE AND 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 or the appropriateness of the proposed penalty. To request a hearing, a Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an 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 the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in this 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 and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice at § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

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 Complainant in this case, Donzetta W.

Thomas, Senior Assistant Regional Counsel, at:

Office of Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA and the RLBPHRA. 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. **However, a request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its 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 or to appeal the Final Order accompanying the Consent Agreement.

If Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Ms. Thomas at (215) 814-2474 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

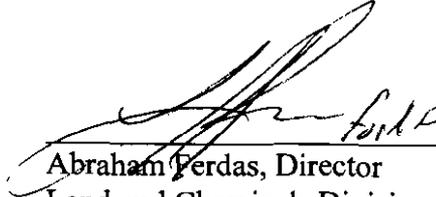
SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances, 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* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, Presiding

Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

9/10/08

Date

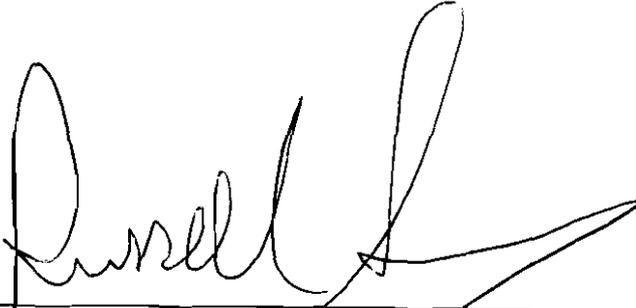

Abraham Verdás, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing ("Complaint"), Docket No. TSCA-03-2008-0386, has been filed with the EPA Region III Regional Hearing Clerk, and that a copy of the Complaint were sent via Federal Express to:

Counsel for Respondent
Christopher Hamb
608 Virginia St., E#100
Charleston, WV 25301

9/15/08
Date



Donzetta W. Thomas (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2474