



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
MAR 30 PM 2:32
REGIONAL HEARINGS
CLERK

MAR 30 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wolfe Landau
142 Middleton Street, #2
Brooklyn, New York 11206-8406

Re: In the Matter of **Wolfe Landau**
Docket No. TSCA-02-2009-9267

Dear Mr. Landau:

Enclosed is the Complaint and Notice of Opportunity for Hearing (the Complaint) and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control Act (TSCA), Section 409, and regulations promulgated pursuant to TSCA set forth at 40 C.F.R. Part 745 Subpart F.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within *thirty (30)* days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

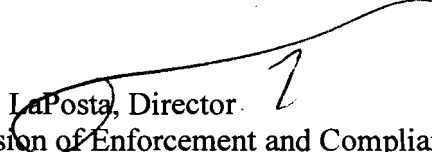
EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these SEPs are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
DOCKET NO. 30 PH 2:22
REGIONAL HEARING
OFFICE

-----X
: In the Matter of :
: :
: Wolfe Landau, :
: :
: Respondent. :
: :
: Proceeding under Section 16(a) of :
: Toxic Substances Control Act, :
: 15 U.S.C. § 2615(a). :
-----X

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No.
TSCA-02-2009-9267

COMPLAINT

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

Background Allegations

1. This is an administrative proceeding pursuant to Section 16(a)(1) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a)(1), to assess a civil penalty against Respondent for violations of provisions of Section 409 of TSCA, 15 U.S.C. § 2689.
2. This tribunal has jurisdiction over this proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).
3. This “COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING” (“Complaint”) constitutes the written notice required by Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2)(A), for the assessment of a civil penalty for any violation of Section 409 of TSCA, 15 U.S.C. § 2689.
4. Complainant, the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2, has been duly delegated the authority to institute this proceeding.

5. Section 409 of TSCA, 15 U.S.C. § 2689, states, in part, that “[i]t shall be unlawful for any person to fail or refuse to comply with a provision of this subchapter [Subchapter IV, 15 U.S.C. §§ 2661-2692] or with any rule or order issued under this subchapter.”

6. Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), 42 U.S.C. § 4852d(b)(5), states, in part, that “[i]t shall be a prohibited act under section 409 of [TSCA, 15 U.S.C. § 2689] for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section.”

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

8. Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), states, in part, “[f]or purposes of enforcing this section under [TSCA], the penalty for each violation applicable under section 16 of [TSCA, 15 U.S.C. § 2615] shall not be more than \$10,000.”

9. Forty C.F.R. § 748.118(f) states, in part, that “[f]or purposes of enforcing this subpart [Subpart F of 40 C.F.R. Part 745], 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....”

Respondent’s Identity

10. Respondent is Wolfe Landau.

11. Respondent, a natural person who resides at 142 Middleton Street in Brooklyn, New York, has his primary place of business at Quality Funding LLC, the address of which is 185 Marcy Avenue, in Brooklyn, New York.

12. Respondent is subject to the regulations pertaining to the disclosure of known lead-based paint and/or lead-based paint hazards promulgated pursuant to RLBPHRA, 42 U.S.C. § 4852d, and codified at 40 C.F.R. Part 745, Subpart F.

13. For all times relevant to the matters set forth below, Respondent has been a member of each of the following limited liability companies:

- a) Bnei Joel LLC (also known as Bnei Yoel LLC);
- b) Ben Noah LLC (also known as Ben David LLC);
- c) Nussi and Malky LLC (also known as Nussie and Malky LLC);
- d) Miron Plaza LLC;
- e) Zev Baum LLC; and
- f) 194 Humboldt Realty LLC.

14. For all times relevant to the matters set forth below, Respondent has been president of Lee Street Properties, Inc., a corporation.

15. On or about July 19, 2005, duly designated representatives of EPA attempted, but were unable, to conduct an inspection at the office of Quality Funding LLC.

16. On November 28, 2007, a SUBPOENA DUCES TECUM, issued under authority of Section 11 of TSCA, 15 U.S.C. § 2610, was served upon each of Respondent and his wife, Malky Landau.

Respondent's Buildings

17. Respondent has been (and continues to be), the "owner" (as that term is defined in 40 C.F.R. § 745.103),¹ in whole or in part, of each of the following properties and premises, as follows:

a) since June 16, 2004, the property and premises located at 1269 East 18th Street, in Brooklyn, New York (hereinafter the "East 18th Street property"), through and/or individually in conjunction with, the Bnei Joel LLC;

b) since February 7, 2005, the property and premises located at 206 Scholes Street, in Brooklyn, New York (hereinafter the "Scholes Street property"), through and/or individually in conjunction with, the Ben Noah LLC;

c) since February 16, 2006, the property and premises located at 161 Vernon Avenue, in Brooklyn, New York (hereinafter the "Vernon Avenue property"), through and/or individually in conjunction with, the Nussi and Malky LLC;

d) since July 28, 2004, the property and premises located at 522 West 134th Street, in New York, New York (hereinafter the "West 134th Street property"), through and/or individually in conjunction with, the Miron Plaza LLC;

e) since November 13, 2003, the property and premises located at 140 Fourth Avenue, in Brooklyn, New York (hereinafter the "Fourth Avenue property"), through and/or individually in conjunction with, the Zev Baum LLC; and

f) since January 9, 2006, the property and premises located at 194 Humboldt

¹ Unless specifically stated otherwise, terms or phrases defined by specified statutory and/or regulatory definitions are subsequently used in this Complaint as so defined.

Street, in Brooklyn, New York (hereinafter the “Humboldt Street property”), through and/or individually in conjunction with, the 194 Humboldt Realty LLC.

18. Respondent has been (and continues to be) the “lessor” (as that term is defined in 40 C.F.R. § 745.103) of each of the following properties and premises, as follows:

- a) since sometime after June 16, 2004, the East 18th Street property, through the Bnei Joel LLC;
- b) since sometime after February 7, 2005, the Scholes Street property, through the Ben Noah LLC;
- c) since sometime after February 16, 2006, the Vernon Avenue property, through the Nussi and Malky LLC;
- d) since sometime after July 28, 2005, the West 134th Street property, through the Miron Plaza LLC;
- e) since sometime after November 13, 2003, the Fourth Avenue property, through the Zev Baum LLC; and
- f) since sometime after January 9, 2006, the Humboldt Street property, through the 194 Humboldt Realty LLC.

19. Between June 27, 2001 and March 31, 2008, Respondent was the owner, through Lee Street Properties, Inc., of the premises and property located at 50 Vermont Street, in Brooklyn, New York (another address of which is 121 Jamaica Avenue; hereinafter the “Vermont Street property”).

20. Each of the following is “residential real property” (as defined in Section 1004(24) of RLBPHRA, 42 U.S.C. § 4851b(24)):

- a) the East 18th Street property;
- b) the Scholes Street property;
- c) the Vernon Avenue property;
- d) the West 134th Street property;
- e) the Fourth Avenue property;

f) the Humboldt Street property; and

g) the Vermont Street property.

21. Each of the following is a “residential dwelling unit” (as defined in Section 1004(23) of RLBPHRA, 42 U.S.C. § 4851b(23) and in 40 C.F.R. § 745.103):

a) the East 18th Street property;

b) the Scholes Street property;

c) the Vernon Avenue property;

d) the West 134th Street property;

e) the Fourth Avenue property;

f) the Humboldt Street property; and

g) the Vermont Street property.

22. Each of the following is “target housing” (as defined in Section 1004(27) of RLBPHRA, 42 U.S.C. § 4851b(27) and in 40 C.F.R. § 745.103):

a) the East 18th Street property;

b) the Scholes Street property;

c) the Vernon Avenue property;

d) the West 134th Street property;

e) the Fourth Avenue property;

f) the Humboldt Street property; and

g) the Vermont Street property.

Transactions involving Respondent’s Properties

23. On or about June 20, 2005, Resul Bekiroglu, as a “lessee” (as that term is defined in 40 C.F.R. § 745.103) of target housing, entered into a contract with Respondent, as the lessor on

behalf of Bnei Yoel LLC, to renew the lease for apartment unit D3 in the East 18th Street property.

24. On or about August 27, 2007, Lioudmila Altynnik (also spelled Altunnik), as a lessee of target housing, entered into a contract with Respondent, as the lessor on behalf of Bnei Yoel LLC, to renew the lease for apartment unit C2 in the East 18th Street property.

25. On or about April 30, 2006, Erick S. Molina, as a lessee of target housing, entered into a contract with Respondent, as the lessor on behalf of Ben Noah LLC, to renew the lease for apartment unit 9 in the Scholes Street property.

26. On or about May 3, 2007, Orfelina Luna, as a lessee of target housing, entered into a contract with Respondent, as the lessor on behalf of Nussie and Malky LLC, to renew the lease for apartment unit 2-B in the Vernon Avenue property.

27. On or about May 21, 2007, Carmen Maysonet, as a lessee of target housing, entered into a contract with Respondent, as the lessor on behalf of Nussie and Malky LLC, to renew the lease for apartment unit 1-D in the Vernon Avenue property.

28. On or about November 6, 2006, Ermina Zayas, as a lessee of target housing, entered into a contract with Respondent, as the lessor on behalf of Miron Plaza LLC, to renew the lease for apartment unit 22 in the West 134th Street property.

29. On or about October 2, 2007, Juan Cruz, as a lessee of target housing, entered into a contract with Respondent, as the lessor on behalf of Zev Baum LLC, to renew the lease for apartment unit 1R in the Fourth Avenue property.

30. On or about November 1, 2007, Michael Matkin, as a lessee of target housing, entered into a contract with Respondent, as the lessor on behalf of 194 Humboldt Realty LLC, to renew the lease for apartment unit 4-R in the Humboldt Street property.

31. On or about December 31, 2007, BQNY Properties LLC, entered into a contract with Respondent, as president of Lee Street Properties, Inc., for the sale of the Vermont Street property.

32. Under the aforementioned (¶ 31, above) contract, BQNY Properties LLC was a "purchaser" (as that term is defined in 40 C.F.R. § 745.103) of target housing.

33. An Indenture effecting the aforementioned (¶ 31, above) sale of the Vermont Street property was entered into on March 31, 2008 between BQNY Properties LLC and Respondent on behalf of the Lee Street Properties, Inc.

COUNT 1: Lead Warning Statement for Leased Premises

34. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

35. Pursuant to 40 C.F.R. § 745.113(b)(1), a lessor is required to include in each contract to lease target housing, either as an attachment or withing the contract, "A Lead Warning Statement" with the language specified in said provision.

36. On or about each of the dates set forth in paragraphs 23-30 (inclusive), above, Respondent, as lessor, entered into a contract to lease target housing.

37. Respondent failed to include in any of the aforementioned (¶ 36, above) eight contracts to lease a Lead Warning Statement, either as an attachment to, or as part of, the contract.

38. Each of Respondent's aforementioned (¶ 37, above) failures to include a Lead Warning Statement constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(b)(1).

39. Forty C.F.R. § 745.113(b)(1) is a rule issued under:

a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and

b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

40. Each of Respondent's aforementioned (¶ 38, above) failures or refusals to comply with 40 C.F.R. § 745.113(b)(1):

a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and

b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

41. For each of Respondent's aforementioned (¶ 40, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 2: Lead Warning Statement for Sold Premises

42. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

43. Pursuant to 40 C.F.R. § 745.113(a)(1), a seller is required to include as an attachment to each contract to sell target housing an attachment, including “A Lead Warning Statement,” with the language specified in said provision.

44. On or about December 31, 2007, as noted in paragraph 31, above, Respondent, as seller, entered into a contract to sell target housing.

45. Respondent failed to include as an attachment to the aforementioned (¶ 44, above) contract to sell a Lead Warning Statement.

46. Respondent’s aforementioned (¶ 45, above) failure to include a Lead Warning Statement constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(a)(1).

47. Forty C.F.R. § 745.113(a)(1) is a rule issued under:

a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and

b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

48. Respondent’s aforementioned (¶ 46, above) failure or refusal to comply with 40 C.F.R. § 745.113(a)(1):

a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and

b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

49. For Respondent’s aforementioned (¶ 48, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 3: Lessor’s Lead-Based Paint Disclosure Statement

50. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

51. Pursuant to 40 C.F.R. § 745.113(b)(2), a lessor is required to include in each contract to lease target housing, either 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 (hereinafter such statement referred to as “lessor’s required statement”).

52. On or about each of the dates set forth in paragraphs 23-30 (inclusive), above, Respondent, as lessor, entered into a contract to lease target housing.

53. Respondent failed to include in any of the aforementioned (§ 52, above) eight contracts to lease the lessor's required statement, either as an attachment to, or as part of, the contract.

54. Each of Respondent's aforementioned (§ 53, above) failures to include the lessor's required statement constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(b)(2).

55. Forty C.F.R. § 745.113(b)(2) is a rule issued under:

a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and

b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

56. Each of Respondent's aforementioned (§ 54, above) failures or refusals to comply with 40 C.F.R. § 745.113(b)(2):

a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and

b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

57. For each of Respondent's aforementioned (§ 56, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 4: Seller's Lead-Based Paint Disclosure Statement

58. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

59. Pursuant to 40 C.F.R. § 745.113(a)(2), a seller is required to include as an attachment to each contract to sell target housing 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 (hereinafter such statement referred to as "seller's required statement").

60. On or about December 31, 2007, as noted in paragraph 31, above, Respondent, as

seller, entered into a contract to sell target housing.

61. Respondent failed to include as an attachment to the aforementioned (¶ 60, above) contract to sell the seller's required statement.

62. Respondent's aforementioned (¶ 61, above) failure to include the seller's required statement constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(a)(2).

63. Forty C.F.R. § 745.113(a)(2) is a rule issued under:

- a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and
- b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

64. Respondent's aforementioned (¶ 62, above) failure or refusal to comply with 40 C.F.R. § 745.113(a)(2):

- a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and
- b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

65. For Respondent's aforementioned (¶ 64, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 5: Lessor's Documentation Pertaining to Lead-Based Paint

66. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

67. Pursuant to 40 C.F.R. § 745.113(b)(3), a lessor is required to include in each contract to lease target housing, either as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint or lead-based paint hazards that have been provided to the lessee), or if no such records or reports are available, the lessor must so indicate (hereinafter such records or reports referred to as the "lessor's required documentation").

68. On or about each of the dates set forth in paragraphs 23-30 (inclusive), above, Respondent, as lessor, entered into a contract to lease target housing.

69. Respondent failed to include in any of the aforementioned (¶ 68, above) eight

contracts to lease the lessor's required documentation, either as an attachment to, or as part of, the contract, nor did the lessor indicate that the lessor's required documentation was not available.

70. Each of Respondent's aforementioned (§ 69, above) failures to include the lessor's required documentation or to indicate said documentation was not available constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(b)(3).

71. Forty C.F.R. § 745.113(b)(3) is a rule issued under:

- a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and
- b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

72. Each of Respondent's aforementioned (§ 70, above) failures or refusals to comply with 40 C.F.R. § 745.113(b)(3):

- a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and
- b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

73. For each of Respondent's aforementioned (§ 72, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 6: Seller's Documentation Pertaining to Lead-Based Paint

74. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

75. Pursuant to 40 C.F.R. § 745.113(a)(3), a seller is required to include as an attachment to each contract to sell target housing a list of any records or reports available to the seller pertaining to lead-based paint or lead-based paint hazards that have been provided to the purchaser, or if no such records or reports are available, the lessor must so indicate (hereinafter such records or reports referred to as the "seller's required documentation").

76. On or about December 31, 2007, as noted in paragraph 31, above, Respondent, as seller, entered into a contract to sell target housing.

77. Respondent failed to include as an attachment to the aforementioned (§ 76, above)

contract to sell the seller's required statement, nor did the seller indicate that the seller's required documentation was not available.

78. Respondent's aforementioned (§ 77, above) failure to include the seller's required documentation or to indicate said documentation was not available constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(a)(3).

79. Forty C.F.R. § 745.113(a)(3) is a rule issued under:

a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and

b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

80. Respondent's aforementioned (§ 78, above) failure or refusal to comply with 40 C.F.R. § 745.113(a)(3):

a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and

b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

81. For Respondent's aforementioned (§ 80, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 7: Lessee's Receipt of Information

82. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

83. Pursuant to 40 C.F.R. § 745.113(b)(4), a lessor is required to include in each contract to lease target housing, either as an attachment or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2) [the lessor's statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof] and 745.113(b)(3) [a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that has been provided to the lessee] and receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686

(hereinafter collectively referred to as the “lessee’s affirmation”).²

84. On or about each of the dates set forth in paragraphs 23-30 (inclusive), above, Respondent, as lessor, entered into a contract to lease target housing.

85. Respondent failed to include in any of the aforementioned (¶ 84, above) eight contracts to lease the lessee’s affirmation, either as an attachment to, or as part of, the contract.

86. Each of Respondent’s aforementioned (¶ 85, above) failures to include the lessee’s affirmation constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(b)(4).

87. Forty C.F.R. § 745.113(b)(4) is a rule issued under:

a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and

b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

88. Each of Respondent’s aforementioned (¶ 86, above) failures or refusals to comply with 40 C.F.R. § 745.113(b)(4):

a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and

b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

89. For each of Respondent’s aforementioned (¶ 88, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 8: Purchaser’s Receipt of Information

90. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

91. Pursuant to 40 C.F.R. § 745.113(a)(4), a seller is required to include as an attachment to each contract to sell target housing a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) [the seller’s statement disclosing the presence

² In 40 C.F.R. § 745.113(b)(4), the statutory reference to the lead hazard information pamphlet is given as 15 U.S.C. § 2696. This is incorrect; it should properly read, as noted above, 15 U.S.C. § 2686.

of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof] and 745.113(a)(3) [a list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards that has been provided to the lessee] and receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 (hereinafter collectively referred to as the “purchaser’s affirmation”).³

92. On or about December 31, 2007, as noted in paragraph 31, above, Respondent, as seller, entered into a contract to sell target housing.

93. Respondent failed to include as an attachment to the aforementioned (¶ 92, above) contract to sell the purchaser’s affirmation.

94. Respondent’s aforementioned (¶ 93, above) failure to include the purchaser’s affirmation constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(a)(4).

95. Forty C.F.R. § 745.113(a)(4) is a rule issued under:

- a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and
- b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

96. Respondent’s aforementioned (¶ 94, above) failure or refusal to comply with 40 C.F.R. § 745.113(a)(4):

- a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and
- b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

97. For Respondent’s aforementioned (¶ 96, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 9: Purchaser’s Statement re Risk Assessment or Property Inspection

98. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

³ In 40 C.F.R. § 745.113(a)(4), the statutory reference to the lead hazard information pamphlet is given as 15 U.S.C. § 2696. This is incorrect; it should properly read, as noted above, 15 U.S.C. § 2686.

99. Pursuant to 40 C.F.R. § 745.113(a)(5), a seller is required to include as an attachment to each contract to sell target housing a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or that he/she waived such opportunity (hereinafter the “purchaser’s statement on risk assessment/inspection, or waiver”).

100. On or about December 31, 2007, as noted in paragraph 31, above, Respondent, as seller, entered into a contract to sell target housing.

101. Respondent failed to include as an attachment to the aforementioned (§ 100, above) contract to sell the purchaser’s statement on risk assessment/inspection, or waiver.

102. Respondent’s aforementioned (§ 101, above) failure to include the purchaser’s statement on risk assessment/inspection, or waiver constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(a)(5).

103. Forty C.F.R. § 745.113(a)(5) is a rule issued under:

- a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and
- b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

104. Respondent’s aforementioned (§ 102, above) failure or refusal to comply with 40 C.F.R. § 745.113(a)(5):

- a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and
- b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

105. For Respondent’s aforementioned (§ 104, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 10: Required Certification Statement for Lease Transaction

106. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

107. Pursuant to 40 C.F.R. § 745.113(b)(6), a lessor is required to include in each contract to lease target housing, either 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 signatures (hereinafter the "leasing parties' certifications").

108. On or about each of the dates set forth in paragraphs 23-30 (inclusive), above, Respondent, as lessor, entered into a contract to lease target housing.

109. Respondent failed to include in any of the aforementioned (§ 108, above) eight contracts to lease the leasing parties' certifications, either as an attachment to, or as part of, the contract.

110. Each of Respondent's aforementioned (§ 109, above) failures to include the leasing parties' certifications constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(b)(6).

111. Forty C.F.R. § 745.113(b)(6) is a rule issued under:

a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and

b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

112. Each of Respondent's aforementioned (§ 110, above) failures or refusals to comply with 40 C.F.R. § 745.113(b)(6):

a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and

b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

113. For each of Respondent's aforementioned (§ 112, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

COUNT 11: Required Certification Statement for Purchase Transaction

114. Complainant realleges paragraphs 1 through 33, above, as if fully set forth below.

115. Pursuant to 40 C.F.R. § 745.113(a)(7), a seller is required to include as an attachment to each contract to sell target housing 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 (hereinafter the "purchasing parties' certifications").

116. On or about December 31, 2007, as noted in paragraph 31, above, Respondent, as

seller, entered into a contract to sell target housing.

117. Respondent failed to include as an attachment to the aforementioned (¶ 116, above) contract to sell the purchasing parties' certifications.

118. Respondent's aforementioned (¶ 117, above) failure to include the purchasing parties' certifications constitutes a failure or refusal to comply with 40 C.F.R. § 745.113(a)(7).

119. Forty C.F.R. § 745.113(a)(7) is a rule issued under:

- a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and
- b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

120. Each of Respondent's aforementioned (¶ 118, above) failures or refusals to comply with 40 C.F.R. § 745.113(a)(7):

- a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and
- b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

121. For each of Respondent's aforementioned (¶ 120, above) violations of Section 409 of TSCA, 15 U.S.C. § 2689, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 1018, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f), which authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615. Pursuant to 40 C.F.R. § 745.118(f), "[f]or purposes of enforcing this subpart [Subpart F of 40 C.F.R. Part 745], 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...." Thus, each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that has been alleged in this Complaint is subject to a maximum penalty of \$11,000.

For purposes of determining the amount of any 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(s) alleged. As to the violator, Section 16 also requires EPA to take into account its ability to pay, the effect of the penalty on its ability to continue to do business, its history of prior such violations, its degree of culpability, as well as such other matters as justice

may require.

To develop the proposed penalty for this proceeding, Complainant has taken into account the particular facts and circumstances of this case, to the extent known up to the time of issuance, with specific reference to EPA's "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 *Fed. Reg.* 59,770), and EPA's December 2007 "§ 1018 Disclosure Rule Enforcement Response and Penalty Policy." These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to the particular facts and circumstances of individual cases. Copies of these documents can be found on the Internet at <http://cfpub.epa.gov/compliance/resources/policies/civil/tasca/> or are available upon request to EPA.

Given the facts alleged herein and the statutory factors enumerated above, as known to Complainant up to the time of issuance, Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

COUNT 1: Lead Warning Statement for Leased Premises

Circumstance Level: **2**

Total number of violations: **8**

Extent Category: Minor: **8**

Penalty Per Violation: Minor (occupant over 18) = \$ 1,550

8 Minor violations x \$ 1,550 = \$12,400

Total Proposed Assessment for this Count:

\$12,400

COUNT 2: Lead Warning Statement for Sold Premises

Circumstance Level: **2**

Total number of violations: **1**

Extent Category: Significant: **1**

Penalty Per Violation: Significant (occupant unknown) = \$ 6,450

Total Proposed Assessment for this Count:

\$ 6,450

COUNT 3: Lessor's Lead-Based Paint Disclosure StatementCircumstance Level: **3**Total number of violations: **8**Extent Category: Minor: **8**

Penalty Per Violation: Minor (occupant over 18) = \$770

8 Minor violations x \$770 = \$6,160

Total Proposed Assessment for this Count: \$ 6,160

COUNT 4: Seller's Lead Warning Statement for Sold PremisesCircumstance Level: **3**Total number of violations: **1**Extent Category: Minor: **1**

Penalty Per Violation: Significant (occupant unknown) = \$ 5,160

Total Proposed Assessment for this Count: \$ 5,160

COUNT 5: Lessor's Documentation Pertaining to Lead-Based PaintCircumstance Level: **5**Total number of violations: **8**Extent Category: Minor: **8**

Penalty Per Violation: Minor (occupant over 18) = \$260

8 Minor violations x \$260 = \$ 2,080

Total Proposed Assessment for this Count: \$2,080

COUNT 6: Seller's Documentation Pertaining to Lead-Based PaintCircumstance Level: **5**Total number of violations: **1**Extent Category: Significant: **1**

Penalty Per Violation: Significant (occupant unknown) = \$ 1,680

Total Proposed Assessment for this Count: \$1,680

COUNT 7: Lessee's Receipt of Information

Circumstance Level: 4

Total number of violations: 8

Extent Category: Minor: 8

Penalty Per Violation: Minor (occupant over 18) = \$520

8 Minor violations x \$520 = \$ 4,160

Total Proposed Assessment for this Count: \$4,160

COUNT 8: Purchaser's Receipt of Information

Circumstance Level: 4

Total number of violations: 1

Extent Category: Significant: 1

Penalty Per Violation: Significant (occupant unknown) = \$ 3,220

Total Proposed Assessment for this Count: \$3,220

COUNT 9: Purchaser's Statement re Risk Assessment or Property Inspection

Circumstance Level: 4

Total number of violations: 1

Extent Category: Significant: 1

Penalty Per Violation: Significant (occupant unknown) = \$ 3,220

Total Proposed Assessment for this Count: \$3,220

COUNT 10: Required Certification Statement for Lease Transaction

Circumstance Level: 6

Total number of violations: 8

Extent Category: Minor: 8

Penalty Per Violation: Minor (occupant over 18) = \$130

8 Minor violations x \$130 = \$ 1,040

Total Proposed Assessment for this Count: \$1,040

COUNT 11: Required Certification Statement for Purchase TransactionCircumstance Level: **6**Total number of violations: **1**Extent Category: Significant: **1**

Penalty Per Violation: Significant (occupant unknown) = \$ 640

Total Proposed Assessment for this Count:

\$ 640

TOTAL PROPOSED PENALTY**\$ 46,210****PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," and are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40

C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). *See generally* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. *See* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: "A civil penalty for a violation of Section...2689 of this title [15 U.S.C. § 2689] shall be assessed by the Administrator by an order made on the record after opportunity...for a hearing in accordance with Section 554 of Title 5 [5 U.S.C. § 554]."

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA order. *See* 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's

right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives his right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Lee A. Spielmann, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212)-637-3222

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect his obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay **the total amount** of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States

of America”, in the full amount of the penalty assessed in this Complaint to the following addressee:

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

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA individual identified on the previous page.

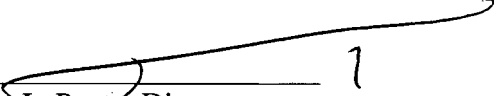
Payment may also be made by electronic fund transfer (EFT). If Respondent chooses to make payment by EFT, Respondent shall then provide the following information to his remitter bank:

- a. Amount of Payment [\$46,210.00]
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
- f. Name of Respondent: **Wolfe Landau**
- g. Case docket number: **TSCA-02-2009-9267**

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA’s receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent’s right both to contest the allegations made in the Complaint and to obtain review of said final order in federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent’s obligation and responsibility to

comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: March 30, 2009
New York, New York



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

TO: Wolfe Landau
142 Middleton Street, # 2
Brooklyn, New York 11206-8406

CERTIFICATE OF SERVICE

This is to certify that on this day, I caused to be mailed a true and correct copy of the foregoing "Complaint and Notice of Opportunity for Hearing," captioned *In the Matter of Wolfe Landau*, and bearing Docket Number TSCA-02-2009-9267 (hereinafter referred to as the "Complaint"), together with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Compliance Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Wolfe Landau
142 Middleton Street, # 2
Brooklyn, New York 11206-8406

Dated: MAR 30 , 2009
New York, New York

Mildred N. Baez