

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

DEC 30 2011

IN RE:

Crespo Realty, Inc.
5918 57th Street
Flushing, NY 11378

Respondent,

945 Elm Street
Reading, PA 19601

533 Franklin Street
Reading, PA 19602

425 N. 10th Street
Reading, PA 19604

609 N. 10th Street
Reading, PA 19604

Target Housing.

DOCKET NO. TSCA-03-2012-0069

ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY
FOR HEARING

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



ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for 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"), a copy of which is enclosed with this Complaint. 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 of the Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A.

The Respondent in this action is Crespo Realty, Inc., which has a principle place of business located at 5918 57th Street in Flushing, New York. By issuing this Complaint, Complainant alleges violations by Crespo Realty, Inc. 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 connection with five (5) written lease agreements associated with the four (4) target housing units, described more fully in Paragraphs 16 - 40 of this Complaint.

Failure to comply with Section 1018 of the RLBPHRA, 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 Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.

II. JURISDICTION, BACKGROUND AND DEFINITIONS

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 the RLBPHRA, 42 U.S.C. § 4852d; 40 C.F.R. Part 745, Subpart F; and 40 C.F.R. §§ 22.1(a)(5) and 22.4.

2. Pursuant to 40 C.F.R. § 745.103, 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/cm^2] or 0.5 percent by weight.
3. 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.
4. Pursuant to 40 C.F.R. § 745.103, the term “lessee” means any entity that enters into an agreement to lease, rent, or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
5. Pursuant to 40 C.F.R. § 745.103, the term “owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.
6. Pursuant to 40 C.F.R. § 745.103, the term “lessor” means any entity that offers target housing for lease, rent, or sublease, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

7. Pursuant to Section 1004(23) of the RLBPHRA, 42 U.S.C. § 4851b(23), Section 401(14) of TSCA, 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.
8. Pursuant to Section 1004(24) of the RLBPHRA, 42 U.S.C. § 4851b(24), and Section 401(15) of TSCA, 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one 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 one or more persons.
9. Pursuant to Section 1004(27) of the RLBPHRA, 42 U.S.C. § 4851b(27), Section 401(17) of TSCA, 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.
10. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following language: “Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”

11. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose 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. Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall include, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.
13. Pursuant to 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.113(b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686.
14. Pursuant to 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include, as an attachment or within the contract, the signatures of the lessors and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.
15. The enforcement provisions of 40 C.F.R. § 745.118(e) and (f) state that:

* * *

(e) Failure or refusal to comply with [40 C.F.R.] § 745.107 (disclosure requirements for sellers and lessors), [40 C.F.R.] § 745.110 (opportunity to conduct an evaluation), [40 C.F.R.] § 745.113 (certification and acknowledgment of disclosure)

or [40 C.F.R.] § 745.115 (agent responsibilities) is a violation of [RLBPHRA Section 1018(b)(5),] 42 U.S.C. § 4852d(b)(5) and of TSCA section 409 (15 U.S.C. § 2689).

(f) 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 [40 C.F.R. Part 745, Subpart F], 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. [This amount was raised to not be more than \$16,000 for violations occurring after January 12, 2009, as set forth in 40 C.F.R. Part 19.]

III. GENERAL ALLEGATIONS

16. At all times relevant to the violations alleged in this Complaint, Crespo Realty, Inc. (hereinafter “Respondent”) was a Delaware corporation with a principle place of business located at 5918 57th Street in Flushing, New York, and is a “person” within the meaning of such term in Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689.
17. At all times relevant to the violations alleged in this Complaint, Respondent was an “owner” of “residential real propert[ies]” including respective housing located at 945 Elm Street in Reading, Pennsylvania (“945 Elm Street property”); 533 Franklin Street in Reading, Pennsylvania (“533 Franklin Street property”); 425 N. 10th Street in Reading, Pennsylvania (“425 N. 10th Street property”); and 609 N. 10th Street in Reading, Pennsylvania (“609 N. 10th Street property”).
18. The housing on the 945 Elm Street property was constructed prior to 1978, and at all times relevant to the allegations in this Complaint, was not “housing for the elderly” or persons with disabilities nor did it include “0-bedroom dwelling[s]” as those terms are defined in 40 C.F.R. § 745.103.

19. At all times relevant to the allegations in this Complaint, the housing on the 945 Elm Street property was “target housing,” within the meaning of Section 1004(27) of RLBPHRA, 42 U.S.C. § 4851b(27), Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

20. Respondent entered into a written agreement, executed on or about December 12, 2008, to lease a “residential dwelling” known as 945 Elm Street, 2nd Floor (Front) located in the housing on the 945 Elm Street property to an individual “lessee”, and was a “lessor” with respect to such lease transaction (hereinafter, the “945 Elm Street, 2nd Floor (Front) Lease Transaction”) as that term is defined in 40 C.F.R. § 745.103.

21. The 945 Elm Street, 2nd Floor (Front) Lease Transaction was not a “[s]hort-term lease [] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

22. The 945 Elm Street, 2nd Floor (Front) Lease Transaction was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

23. Respondent entered into a written agreement, executed on or about February 1, 2008, to lease a “residential dwelling” known as 945 Elm Street, 1st Floor (Front) located in the housing on the 945 Elm Street property to an individual “lessee”, and was a “lessor” with respect to such lease transaction (hereinafter, the “945 Elm Street, 1st Floor (Front) Lease Transaction”) as that term is defined in 40 C.F.R. § 745.103.

24. The 945 Elm Street, 1st Floor (Front) Lease Transaction was not a “[s]hort-term lease [] of 100 days or less, where no lease renewal or extension can occur,” as provided at

40 C.F.R. § 745.101(c).

25. The 945 Elm Street, 1st Floor (Front) Lease Transaction was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

26. The housing on the 533 Franklin Street property was constructed prior to 1978, and at all times relevant to the allegations in this Complaint, was not “housing for the elderly” or persons with disabilities nor did it include “0-bedroom dwelling[s]” as those terms are defined in 40 C.F.R. § 745.103.

27. At all times relevant to the allegations in this Complaint, the housing on the 533 Franklin Street property was “target housing,” within the meaning Section 1004(27) of RLBPHRA, 42 U.S.C. § 4851b(27), Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

28. Respondent entered into a written agreement, executed on or about January 14, 2008, to lease a “residential dwelling” known as 533 Franklin Street, 1st Floor (Rear) located in the housing on the 533 Franklin Street property to an individual “lessee”, and was a “lessor” with respect to such lease transaction (hereinafter, the “533 Franklin Street, 1st Floor (Rear) Lease Transaction”) as that term is defined in 40 C.F.R. § 745.103.

29. The 533 Franklin Street, 1st Floor (Rear) Lease Transaction was not a “[s]hort-term lease [] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

30. The 533 Franklin Street, 1st Floor (Rear) Lease Transaction was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under

[40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

31. The housing on the 425 N. 10th Street property was constructed prior to 1978, and at all times relevant to the allegations in this Complaint, was not "housing for the elderly" or persons with disabilities nor did it include "0-bedroom dwelling[s]" as those terms are defined in 40 C.F.R. § 745.103.

32. At all times relevant to the allegations in this Complaint, the housing on the 425 N. 10th Street property was "target housing," within the meaning Section 1004(27) of RLBPHRA, 42 U.S.C. § 4851b(27), Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

33. Respondent entered into a written agreement, executed on or about January 10, 2008, to lease a "residential dwelling" known as 425 N. 10th Street, 2nd Floor located in the housing on the 425 N. 10th Street property to an individual "lessee", and was a "lessor" with respect to such lease transaction (hereinafter, the "425 N. 10th Street, 2nd Floor Lease Transaction") as that term is defined in 40 C.F.R. § 745.103.

34. The 425 N. 10th Street, 2nd Floor Lease Transaction was not a "[s]hort-term lease [] of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

35. The 425 N. 10th Street, 2nd Floor Lease Transaction was not a "[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

36. The housing on the 609 N. 10th Street property was constructed prior to 1978, and at all times relevant to the allegations in this Complaint, was not “housing for the elderly” or persons with disabilities nor did it include “0-bedroom dwelling[s]” as those terms are defined in 40 C.F.R. § 745.103.

37. At all times relevant to the allegations in this Complaint, the housing on the 609 N. 10th Street property was “target housing,” within the meaning of Section 1004(27) of RLBPHRA, 42 U.S.C. § 4851b(27), Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

38. Respondent entered into a written agreement, executed on or about January 15, 2008, to lease a “residential dwelling” known as 609 N. 10th Street, 1st Floor (Rear) located in the housing on the 609 N. 10th Street property to individual “leesee[s]”, and was a “lessor” with respect to such lease transaction (hereinafter, the “609 N. 10th Street, 1st Floor (Rear) Lease Transaction”) as that term is defined in 40 C.F.R. § 745.103.

39. The 609 N. 10th Street, 1st Floor (Rear) Lease Transaction was not a “[s]hort-term lease [] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

40. The 609 N. 10th Street, 1st Floor (Rear) Lease Transaction was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

IV. VIOLATIONS

Counts 1 through 5 - 40 C.F.R. § 113(b)(1)

41. The allegations contained in Paragraphs 1 through 40, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
42. Respondent failed to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction.
43. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the required "Lead Warning Statement", either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, constitutes five separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 6 through 10 - 40 C.F.R. § 113(b)(2)

44. The allegations contained in Paragraphs 1 through 40, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
45. Respondent failed to include a statement disclosing the presence of, along with any additional information available concerning, known lead-based paint and/or lead-based paint

hazards, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, as required by 40 C.F.R. § 745.113(b)(2).

46. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include a statement disclosing the presence of, or additional information available concerning, known lead-based paint and/or lead-based paint hazards, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, constitutes five separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 11 through 15 - 40 C.F.R. §745.113(b)(3)

47. The allegations contained in Paragraphs 1 through 40, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

48. Respondent failed to include a list of records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards that had been provided to the lessee, or to indicate that no such records or reports were available, either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction,

the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, as required by 40 C.F.R. § 745.113(b)(3).

49. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to include a list of records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards that have been provided to the lessee, or to indicate that no such records or reports were available, either attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, constitutes five separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 16 through 20 - 40 C.F.R. §745.113(b)(4)

50. The allegations contained in Paragraphs 1 through 40, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

51. Respondent failed to include a statement by the lessee affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, as required by 40 C.F.R. § 745.113(b)(4).

52. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to include a statement by the lessees affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, constitutes five separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 21 through 25 - 40 C.F.R. §745.113(b)(6)

53. The allegations contained in Paragraphs 1 through 40, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

54. Respondent failed to include the signatures of the lessor and lessee, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, either as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front) Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, as required by 40 C.F.R. § 745.113(b)(6).

55. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to include the required signatures and the required certifications, along with the dates of such signatures, as attachments to, or within, the leases for the target housing subject to the 945 Elm Street, 2nd Floor (Front)

Lease Transaction, the 945 Elm Street, 1st Floor (Front) Lease Transaction, the 533 Franklin Street, 1st Floor (Rear) Lease Transaction, the 425 N. 10th Street, 2nd Floor Lease Transaction, and the 609 N. 10th Street, 1st Floor (Rear) Lease Transaction, constitutes five separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

V. PROPOSED CIVIL PENALTY

Section 1018 of the RLBPHRA, 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 maximum amount was adjusted to \$11,000 for violations occurring on or before January 12, 2009, and to \$16,000 for violations occurring after January 12, 2009, pursuant to the *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19.

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 Final Enforcement Response Policy (“ERP”)*, dated December 2007, a copy of which is enclosed with this Complaint. The *ERP* provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated

above to particular cases. The ERP represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the Complainant's civil penalty proposal is contested through the hearing process described below, Complainant is prepared to offer a statutory basis for the elements of the ERP, as well as for the amount and nature of the civil penalty proposed.

Complainant proposes the assessment, against Respondent, of a civil penalty of up to \$11,000 for each violation alleged in this Complaint. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty amount 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, any facts and circumstances unknown to Complainant at the time of issuance of this Complaint that become known after the Complaint is issued including Respondent's ability to pay the proposed civil penalty assessed in this Complaint. With respect to Respondent's ability to pay the proposed penalty, it is the Respondent's responsibility to provide to Complainant financial information to support and establish a claim of an inability to pay the proposed penalty. Complainant's proposal of the assessment of a civil penalty against the Respondent does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of the violations for which the assessment of a civil penalty is sought is provided below. This explanation is based upon the facts known to the Complainant at the time this Complaint is issued, Complainant's consideration of the statutory penalty factors enumerated above and the

relevant guidance provided in the ERP.

1. Explanation of Circumstance Level and Extent of Violation

A. Circumstance Levels:

- a) 40 C.F.R. §§ 745.113(b)(1) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(1) are deemed to represent a “high” level of impairment to a lessee’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, the violations alleged in Counts 1 through 5 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(b)(2) violations: Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(2) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 3 violations in the ERP. As a result, the violations alleged in Counts 6 through 10 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(b)(3) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(3) are deemed to represent a “low” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 5 violations in the ERP. As a result, the violations alleged in Counts 11 through 15 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(b)(4) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(4) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 4 violations in the ERP. As a result, the violations alleged in Counts 16 through 20 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(b)(6) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(6) are deemed to represent a “low” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 6 violations in the ERP. As a result, the violations alleged in Counts 21 through 25 of this Complaint may be characterized as Circumstance Level 6 violations for purposes of calculating an appropriate penalty.

B. Extent Levels:

a) Major Violations: Defined as “[p]otential for ‘serious’ damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees of target housing in which a child under six years of age or pregnant woman lives is considered a “Major Extent” violation under the ERP. At the time of the violations alleged in this Complaint in connection with the 945

Elm Street, 2nd Floor (Front) Lease Transaction, the lessee had children under the age of six (6) who would and did reside with her during some or all of the term of the lease. As a result, the violations alleged in Counts 1, 6, 11, 16 and 21 of this Complaint may be characterized as “Major Extent” violations for purposes of calculating an appropriate penalty.

- b) **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 who have no children and are not pregnant women at the time the Disclosure Rule violations occur are considered a “Minor Extent” violations under the ERP. Based on information existing at the time of this Complaint, all violations this Complaint other than those described in Section V.1.B.a immediately above may be characterized as “Minor Extent” violations for purposes of calculating an appropriate penalty.

2. Summary of Penalty Calculation by Count

<u>Count</u>	<u>Lease Transaction</u>	<u>Violations</u>	<u>Circumstance/Extent</u>
1.	945 Elm Street, 2 nd Floor (Front)	745.113(b)(1)	Level 2, Major Extent
2.	945 Elm Street, 1 st Floor (Front)	745.113(b)(1)	Level 2, Minor Extent
3.	533 Franklin Street, 1 st Floor (Rear)	745.113(b)(1)	Level 2, Minor Extent
4.	425 N. 10 th Street, 2 nd Floor	745.113(b)(1)	Level 2, Minor Extent
5.	609 N. 10 th Street, 1 st Floor (Rear)	745.113(b)(1)	Level 2, Minor Extent
6.	945 Elm Street, 2 nd Floor (Front)	745.113(b)(2)	Level 3, Major Extent
7.	945 Elm Street, 1 st Floor (Front)	745.113(b)(2)	Level 3, Minor Extent
8.	533 Franklin Street, 1 st Floor (Rear)	745.113(b)(2)	Level 3, Minor Extent
9.	425 N. 10 th Street, 2 nd Floor	745.113(b)(2)	Level 3, Minor Extent
10.	609 N. 10 th Street, 1 st Floor (Rear)	745.113(b)(2)	Level 3, Minor Extent
11.	945 Elm Street, 2 nd Floor (Front)	745.113(b)(3)	Level 5, Major Extent
12.	945 Elm Street, 1 st Floor (Front)	745.113(b)(3)	Level 5, Minor Extent
13.	533 Franklin Street, 1 st Floor (Rear)	745.113(b)(3)	Level 5, Minor Extent
14.	425 N. 10 th Street, 2 nd Floor	745.113(b)(3)	Level 5, Minor Extent
15.	609 N. 10 th Street, 1 st Floor (Rear)	745.113(b)(3)	Level 5, Minor Extent

16.	945 Elm Street, 2 nd Floor (Front)	745.113(b)(4)	Level 4, Major Extent
17.	945 Elm Street, 1 st Floor (Front)	745.113(b)(4)	Level 4, Minor Extent
18.	533 Franklin Street, 1 st Floor (Rear)	745.113(b)(4)	Level 4, Minor Extent
19.	425 N. 10 th Street, 2 nd Floor	745.113(b)(4)	Level 4, Minor Extent
20.	609 N. 10 th Street, 1 st Floor (Rear)	745.113(b)(4)	Level 4, Minor Extent
21.	945 Elm Street, 2 nd Floor (Front)	745.113(b)(6)	Level 6, Major Extent
22.	945 Elm Street, 1 st Floor (Front)	745.113(b)(6)	Level 6, Minor Extent
23.	533 Franklin Street, 1 st Floor (Rear)	745.113(b)(6)	Level 6, Minor Extent
24.	425 N. 10 th Street, 2 nd Floor	745.113(b)(6)	Level 6, Minor Extent
25.	609 N. 10 th Street, 1 st Floor (Rear)	745.113(b)(6)	Level 6, Minor Extent

VI. 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, 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 against Respondent 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 a 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 40 C.F.R. § 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 the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Jennifer M. Abramson, Senior Assistant Regional Counsel, at:

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

VII. 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 filing of such a Consent Agreement

shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and 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. Abramson at (215) 814-2066 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.


Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding because a specific penalty is not proposed in the Amended Complaint. See 40 C.F.R. § 22.18(a)(1).

VIII. 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, the Presiding Officer, the 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, the

Presiding Officer, the Judicial Officer, the 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.

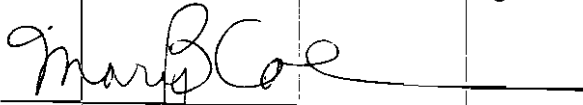
12/30/11
Date


Abraham Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I certify that, on the date indicated below, I served a true and correct copy of the Complaint and Notice of Opportunity for Hearing in In re: Crespo Realty, Inc., Docket No. TSCA -03-2012-0069, on the person listed below via Certified Mail, Return Receipt Requested, and hand-delivered the original and one copy of the Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, U.S. EPA - Region III.

David Crespo, President
Crespo Realty, Inc.
5918 57th Street
Flushing, NY 11378



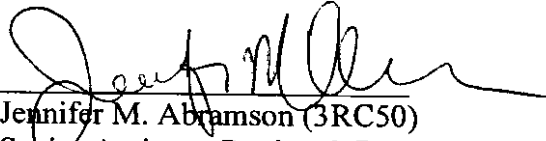
Mary B. Coe
Acting Deputy Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Date 12/30/11

I further certify that a true and correct copy of the same was placed in EPA counsel's case file.

JAN 26 2012

Date



Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2066