



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912**

BY HAND

December 19, 2018

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 1  
5 Post Office Square, Suite 100 (ORC 04-6)  
Boston, MA 02109-3912

RECEIVED

DEC 19 2018

EPA ORC WS  
Office of Regional Hearing Clerk

Re: Investment Properties, L.L.C.  
Docket No. TSCA-01-2018-0017

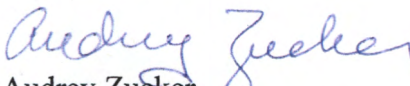
Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of the following:

- (1) Motion for Default Order
- (2) Memorandum in Support of Motion for Default Order with Exhibits 1 – 3
- (3) Proposed Default Order
- (4) Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

  
Audrey Zucker  
Enforcement Counsel

Enclosure

cc: Frederick Lockwood, Member, Investments Properties, L.L.C.

Certificate of Service

I hereby certify that the foregoing Motion for Default Order and Memorandum in Support of Motion for Default Order, with exhibits and proposed Default Order, has been sent to the following persons on the date noted below:

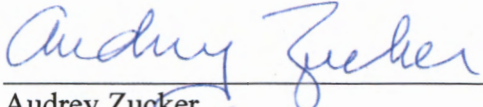
Original and one copy  
(Hand-Delivered):

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square, Suite (ORC 04-6)  
Boston, MA 02109-3912

Copy (overnight mail  
and electronic mail):

Frederick Lockwood, Member  
Investment Properties, L.L.C.  
474 Fort Hill Road  
Gorham, ME 04038  
[rick@dennwood.com](mailto:rick@dennwood.com)

Dated: Dec. 19, 2018

  
Audrey Zucker  
Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100 (OES04-2)  
Boston, Massachusetts 02109-3912

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of: )  
)  
)  
Investment Properties, L.L.C. )  
474 Fort Hill Road )  
Gorham, ME 04038 )  
)  
Respondent. )  
)  
Proceeding under Section 16(a) of the )  
Toxic Substances Control Act, )  
15 U.S.C. § 2615(a) )  
\_\_\_\_\_ )

**Docket No.  
TSCA-01-2018-0017**

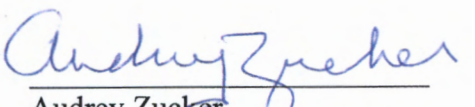


**MOTION FOR DEFAULT ORDER**

The Complainant, the United States Environmental Protection Agency (“EPA”), moves for the issuance of an order under 40 C.F.R. §22.17, finding that Respondent, Investment Properties, L.L.C., is in default in this matter, finding that Respondent violated Section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689 (“TSCA”), by failing to comply with the Lead Disclosure Rule requirements of 40 C.F.R. Part 745, Subpart F (40 C.F.R. §§ 745.100-745.119), and assessing a penalty.

In support of its motion, EPA submits the attached Memorandum in Support of Default Motion, with Exhibits 1 - 3, and a Proposed Default Order.

Respectfully submitted,

  
\_\_\_\_\_  
Audrey Zucker  
Enforcement Counsel

Date: Dec. 19, 2018

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
Investment Properties, L.L.C.	)	<b>Docket No.</b>
474 Fort Hill Road	)	<b>TSCA-01-2018-0017</b>
Gorham, ME 04038	)	
	)	
Respondent.	)	
	)	
Proceeding under Section 16(a) of the	)	
Toxic Substances Control Act,	)	
15 U.S.C. § 2615(a)	)	
_____	)	

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT ORDER

The Complainant, the United States Environmental Protection Agency (“EPA”), has moved for the issuance of an order finding that Respondent, Investment Properties, L.L.C., is in default in this matter, finding that Respondent violated Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (“Lead-Based Paint Disclosure Rule”), and assessing a penalty of \$82,896.00.

I. Respondent Should Be Found In Default

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 (“Part 22”) provides that a party may be found to be in default after motion, upon failure to file a timely answer to the complaint. 40 C.F.R. § 22.17.

The Complaint in this action was filed on February 7, 2018. In the Complaint, EPA alleged that Respondent violated federally enforceable provisions of TSCA Section 409, the Act, and the Disclosure Rule, and that Respondent is therefore subject to penalties under TSCA Section 16, 15 U.S.C. § 2689. A copy of the Complaint is attached as Exhibit 1. The Complaint was first served on Respondent's principal, Frederick Lockwood, by certified mail, return receipt requested. See 40 C.F.R. § 22.5(b)(1) & (b)(1)(ii)(A). However, when the Complaint was returned by the U.S. Postal Service because the certified letter was unclaimed, EPA mailed the Complaint by UPS overnight delivery, a reliable commercial delivery service that provides written verification of delivery. EPA obtained from UPS written verification of delivery to Respondent on March 13, 2018. Accordingly, service was complete on March 13, 2018. Affidavit of Audrey Zucker, Esq., dated November 20, 2018, attached as Exhibit 2. See 40 C.F.R. § 22.7(c).

Respondent has not filed an answer, and the 30-day period for filing an answer has lapsed. See 40 C.F.R. § 22.15(a). Because Respondent has not filed a timely answer to the Complaint, Respondent should be found in default. Such default constitutes an admission of all facts alleged in the Complaint and a waiver of any rights to contest the factual allegations of the Complaint. 40 C.F.R. § 22.17(a).

## II. Respondent's Action Violated TSCA and the Act

The following legal and factual grounds, as required by 40 C.F.R. § 22.17(b), support a finding that the Complaint establishes a prima facie case that Respondent violated TSCA Section 409, the Act, and the Lead-Based Paint Disclosure Rule.

In 1992, Congress passed the Act, 42 U.S.C. §§ 4851 *et seq*, in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American

housing stock contains more than three million tons of lead in the form of lead-based paint (“LBP”), and that the ingestion of lead from deteriorated or abraded LBP is the most common cause of lead poisoning in children. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subparts E and F.

Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17) and 40 C.F.R. § 745.103, the housing stock addressed by the Act’s transaction requirements is termed “target housing,” and is defined as any housing constructed prior to 1978, excepting housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing). Pursuant to 40 C.F.R. § 745.103, “lessor” means any entity that offers target housing for lease, rent, or sublease.

The LBP Disclosure Rule regulations set forth at 40 C.F.R. Part 745, Subpart F, require that lessors of target housing must take the following actions, among others, prior to lessees becoming obligated to lease target housing: (1) provide to lessees an EPA-approved lead hazard information pamphlet; (2) disclose to lessees the presence of any known LBP and/or LBP hazards in the target housing being leased; (3) include, either within or as an attachment to the lease contract, a Lead Warning Statement; and (4) provide lessees with any reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule is a violation of Section 409 of TSCA.

Respondent is a limited liability company formed under the laws of the State of Maine. (Complaint, paragraph 11). Respondent owns or owned nine residential buildings in Lewiston, Maine constructed prior to 1978, that contain a total of 55 separate apartments. (Complaint, paragraph 12). At the time of the violations alleged in the Complaint, Respondent managed and

offered for lease residential apartments in its buildings in Lewiston, Maine, including: 73 Bartlett Street #1- lease commenced August 6, 2015; 141 Bartlett Street #1- lease commenced August 13, 2015; 141 Bartlett Street #2 - lease commenced December 15, 2014; 166 Bartlett Street #1 - lease commenced October 6, 2015; 166 Bartlett Street #2 - lease commenced March 16, 2015; 166 Bartlett Street #3 - lease commenced February 2, 2015; 184 Bartlett Street #2 - lease commenced August 31, 2015; 184 Bartlett Street #3 floor front - lease commenced March 24, 2016; and 182 Blake Street #3 - lease commenced August 19, 2015. (Complaint, paragraph 16).

In Spring 2016, EPA received complaints from an attorney, Nicole R. Bissonnette, KIDS Legal, Lewiston, Maine, who represented two tenants that leased separate units at Respondent's property located at 184 Bartlett Street, Lewiston, Maine 04240. (Complaint, paragraph 17). According to Attorney Bissonnette, the State of Maine had issued one or more lead abatement orders to Respondent concerning 184 Bartlett Street. She also sent EPA copies of these orders and of her clients' leases.

In response, EPA performed an inspection of Respondent's properties in Lewiston on June 30, 2016, at which time Respondent provided EPA inspectors with copies of leases. (Complaint, paragraphs 17 and 19). EPA also met with Respondent on August 30, 2016. (Complaint, paragraph 18). By correspondence dated February 18, 2016, and during face-to-face meetings on June 30, 2016 and August 30, 2016, EPA provided compliance assistance to Respondent, including Respondent's principal, Frederick Lockwood, and Respondent's assistant, Diego Martinez. (Complaint, paragraph 18). At the conclusion of the inspection on June 30, 2016, EPA provided Respondent with a "Notice of Potential Violations of the Disclosure Rule." (Complaint, paragraph 19).

Based upon a review of information obtained from Respondent on June 30, 2016 and August 30, 2016, and EPA's additional investigation, Complainant has identified the following violations of the Act and the Disclosure Rule. (Complaint, paragraph 20).

A. Count I: Failure of Respondent to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet

Respondent failed to provide lead hazard information in the form of an EPA pamphlet to the lessees of two of the units. (Complaint, paragraph 23 and 24). Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under a contract to lease target housing, a lessor must provide lessee with an EPA-approved lead hazard information pamphlet, "Protect your family from Lead in the Home." (Complaint, paragraph 22). Respondent failed to provide an EPA-approved pamphlet to the lessees of 141 Bartlett Street #1 and 184 Bartlett Street 3<sup>rd</sup> floor before the lessee was obligated under a contract to lease such target housing. (Complaint, paragraphs 23 and 24). Respondent's failure to deny the factual allegations contained in Count I of the Complaint constitutes an admission of these allegations. 40 C.F.R. § 22.15(d). Respondent's failure to provide the EPA-approved pamphlet to the lessees of target housing before the lessees became contractually obligated to lease said housing constitutes two (2) violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689. (Complaint, paragraph 25).

B. Count II: Failure of Respondent to Include a Statement by the Lessor Disclosing the Presence of Known LBP or Hazards, or Lack of Knowledge Thereof

Respondent failed to include a statement disclosing the presence of known LBP or hazards, or lack of knowledge thereof. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include as an attachment or within the lease contract a statement by the lessor disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating no knowledge of the presence of LBP and/or LBP hazards. (Complaint,



paragraph 27). Respondent failed to include, as an attachment or within the lease contract, a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee, for the following dates and locations: August 6, 2015, for 73 Bartlett Street #1; August 13, 2015, for 141 Bartlett Street #1; December 15, 2014, for 141 Bartlett Street #2; October 6, 2015 for Bartlett Street #1; March 16, 2015, for 166 Bartlett Street #2; February 2, 2015, for 166 Bartlett Street #3; August 31, 2015, for 184 Bartlett Street #2; March 24, 2016, for 184 Bartlett Street, 3<sup>rd</sup> floor front; and August 19, 2015, for 182 Blake Street #3. (Complaint, paragraphs 28-36). Respondent's failure to deny the factual allegations contained in Count II of the Complaint constitutes an admission of these allegations. 40 C.F.R. § 22.15(d). The above-listed violations alleged in this Count are prohibited acts under TSCA Section 409, 15 U.S.C. § 2689, and constitute nine (9) violations of 40 C.F.R. § 745.113(b)(2). (Complaint, paragraph 37).

C. Count III: Failure of Respondent to Include a List of Any Records Available to the Lessor that Pertain to LBP or Hazards in the Housing, or the Failure to Indicate That No Such Records Exist

Respondent failed to include as an attachment or within the contract to lease target housing a list of any records available to the lessor that pertain to LBP or LBP hazards in the housing, or failed to indicate that no such records exist, as required by 40 C.F.R. § 745.113(b)(3). (Complaint, paragraph 39). Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee, for the following dates and locations: August 6, 2015, for 73 Bartlett Street #1; August 13, 2015, for 141 Bartlett Street #1; December 15, 2014, for 141 Bartlett Street #2; October 6, 2015 for 166 Bartlett Street #1; March 16, 2015, for 166 Bartlett Street #2; February 2, 2015, for 166 Bartlett

Street #3; August 31, 2015, for 184 Bartlett Street #2; March 24, 2016, for 184 Bartlett Street, 3rd floor front; and August 19, 2015, for 182 Blake Street #3. (Complaint, paragraphs 40-48). Respondent's failure to deny the factual allegations contained in Count III of the Complaint constitutes an admission of these allegations. 40 C.F.R. § 22.15(d). The above-listed violations alleged in this Count are prohibited acts under Section 409 of TSCA, 15 U.S.C. § 2689, and constitute nine (9) violations of 40 C.F.R. § 745.113(b)(3). (Complaint, paragraph 49).

### III. A Penalty of \$82,896.00 Should Be Assessed

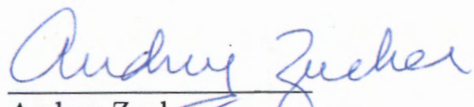
Complainant recommends the imposition of a \$82,896.00 civil penalty, as proposed in the Complaint. The following legal and factual grounds, as required by 40 C.F.R. § 22.17(b), support a finding that the proposed penalty amount is appropriate in light of the penalty assessment criteria of TSCA Section 16, 15 U.S.C. § 2615, as applied to the circumstances of this case. Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent and gravity of the violations and, with respect to Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as just may require. Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2007 Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy (the "ERP"), including updates of December 6, 2013 and January 11, 2018. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases. (*See* Attachment A to the Complaint explaining the reasoning for this penalty.) In addition, EPA performed a search of Investment Properties, L.L.C. and its principal Frederick Lockwood on both Hoovers and Nexis/Lexis websites. (*See*

Exhibit 3 for the results of this search). Nothing in the information found on these websites indicates that Respondent does not have the ability to pay the assessed penalty of \$82,896.00.

IV. Conclusion

The Complainant requests that the Regional Judicial Officer issue an order finding that Respondent is in default, that Respondent violated TSCA, the Act, and the Disclosure Rule, and that an appropriate penalty be assessed in the amount of \$82,896.00.

Respectfully submitted,

  
Audrey Zucker  
Enforcement Counsel

Date: Dec 19, 2018

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
Investment Properties, L.L.C.	)	<b>Docket No.</b>
474 Fort Hill Road	)	<b>TSCA-01-2018-0017</b>
Gorham, ME 04038	)	
	)	
Respondent.	)	
	)	
Proceeding under Section 16(a) of the	)	
Toxic Substances Control Act,	)	
15 U.S.C. § 2615(a)	)	
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**PROPOSED DEFAULT ORDER**

**I. Introduction**

This proceeding was commenced on February 7, 2018, with the filing of a Complaint by the Complainant, the United States Environmental Protection Agency, Region 1 ("EPA"), against Respondent, Investment Properties, L.L.C. The Complaint charges Respondent with twenty violations of Section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689 (TSCA), by failing to comply with the Lead Disclosure Rule requirements of 40 C.F.R. Part 745, Subpart F (40 C.F.R. §§ 745.100-745.119), a rule promulgated under section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851, *et seq.* The Complaint proposed a total penalty of \$82,896.00.

The Complaint was filed on February 7, 2018, and service was complete on March 13, 2018. To date, Respondent has not filed an Answer and has not requested an extension of time for filing an Answer. For the reasons set out below, Respondent is found to be in default pursuant to section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. 22.17(a), and is

assessed the proposed penalty of \$82,896.00.

## II. Findings of Fact and Conclusions of Law

1. The Complainant is the United States Environmental Protection Agency (EPA), Region 1.
2. The Respondent is Investment Properties, L.L.C., an "owner" and "lessor" (within the meaning of 40 C.F.R. § 745.103) of nine (9) residential buildings in Lewiston, Maine, that were constructed prior to 1978, and which are therefore "target housing" under 40 C.F.R. § 745.103. Those specific rental units and leases at issue located in Lewiston, Maine, are: 73 Bartlett Street #1, 141 Bartlett Street #1, 141 Bartlett Street #2, 166 Bartlett Street #1, 166 Bartlett Street #2, 166 Bartlett Street #3, 184 Bartlett Street #2, 184 Bartlett Street 3rd floor front, and 182 Blake Street #3.
3. Section 745.107(a)(1) of the Lead Disclosure Rule, 40 C.F.R. § 745.107(a), requires a lessor to provide a lessee with an EPA-approved lead hazard information pamphlet entitled *Protect your Family from Lead in the Home*, or an equivalent pamphlet approved by EPA for use in the state, before a lessee is obligated under a contract to lease target housing.
4. Section 745.113(b)(2) of the Lead Disclosure Rule, 40 C.F.R. § 745.113(b)(2), requires a lessor to include within, or as an attachment to, the contract to lease target housing 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 thereof.
5. Section 745.113(b)(3) of the Lead Disclosure Rule, 40 C.F.R. § 745.113(b)(3), requires a lessor to include within, or as an attachment to, the contract to lease target housing a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist.
6. In about Spring 2016, EPA received complaints from an attorney, Nicole R. Bissonette, KIDS Legal, Lewiston, Maine, who represented two tenants that leased separate units at Respondent's property located at 184 Bartlett Street, Lewiston, Maine 04240. According to Attorney Bissonette, the State of Maine had issued one or more lead abatement orders to Respondent concerning 184 Bartlett Street. She also sent EPA copies of these orders and of her clients' leases. In response, EPA performed an inspection of Respondent's properties in Lewiston on June 30, 2016.
7. By correspondence dated February 18, 2016, and during face-to-face meetings on June 30, 2016 and August 30, 2016, EPA provided compliance assistance to Respondent, including Respondent's principal, Frederick Lockwood, and Respondent's assistant, Diego Martinez.



8. During a meeting on June 30, 2016, Respondent provided EPA inspectors with copies of leases. At this meeting, EPA provided Respondent with a "Notice of Potential Violations of the Disclosure Rule."
9. On or about August 6, 2015, Respondent entered into a lease contract with a family with no dependents, to lease 73 Bartlett Street #1.
10. On or about August 13, 2018, Respondent entered into a lease contract with a family with one dependent, age eight, to lease 141 Bartlett Street #1.
11. On or about December 15, 2014, Respondent entered into a lease contract with a family with no dependents, to lease 141 Bartlett Street #2.
12. On or about October 6, 2015, Respondent entered into a lease contract with a family with three dependents, ages seven, nine, and fourteen, to lease 166 Bartlett Street #1.
13. On or about March 16, 2015, Respondent entered into a lease contract with a family with no dependents, to lease 166 Bartlett Street #2.
14. On or about February 2, 2015, Respondent entered into a lease contract with a family with one dependent, age six, to lease 166 Bartlett Street #3.
15. On or about August 31, 2015, Respondent entered into a lease contract with a family with no dependents, to lease 184 Bartlett Street #2.
16. On or about March 24, 2016, Respondent entered into a lease contract with a family with two dependents, ages four and ten, to lease 184 Bartlett Street 3<sup>rd</sup> floor front.
17. On or about August 19, 2015, Respondent entered into a lease contract with a family with one dependent, age seventeen, to lease 182 Blake Street #3.
18. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to the lessees of 184 Bartlett Street #1 and 184 Bartlett Street 3<sup>rd</sup> floor, as required by 40 C.F.R. § 745.107(a)(1), constitutes two violations of Section 409 of TSCA, 15 U.S.C. § 2689.
19. Respondent's failure to include as an attachment, or within the contract to lease: 73 Bartlett Street #1, 141 Bartlett Street #1, 141 Bartlett Street #2, 166 Bartlett Street #1, 166 Bartlett Street #2, 166 Bartlett Street #3, 184 Bartlett Street #2, 184 Bartlett Street 3<sup>rd</sup> floor, and 182 Blake Street #3, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge or, as required by 40 C.F.R. § 745.113(b)(2) constitutes nine violations of Section 409 of TSCA, 15 U.S.C. § 2689.
20. Respondent's failure to include as an attachment, or within the contract to lease: 73 Bartlett Street #1, 141 Bartlett Street #1, 141 Bartlett Street #2, 166 Bartlett Street #1,

166 Bartlett Street #2, 166 Bartlett Street #3, 184 Bartlett Street #2, 184 Bartlett Street 3rd floor, and 182 Blake Street #3, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist, as required by 40 C.F.R. § 745.113(b)(3) constitutes nine violations of Section 409 of TSCA, 15 U.S.C. § 2689.

### **III. Determination of Civil Penalty Amount**

21. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default “[t]he relief proposed in the complaint ... shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c).
22. Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of up to \$10,000 for each violation, as adjusted up to \$17,395, by the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. § 19.4. See 83 Fed. Reg. 1190 (Jan. 10, 2018).
23. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that the following factors be considered in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require.
24. EPA has issued guidelines for penalties under TSCA titled “December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy,” (“ERP”), including updates of December 2013 and January 11, 2018.
25. Out of the twenty of the Respondent’s violations under the Lead Disclosure Rule, five were considered “major” because there were children under the age of six living in the target housing at the time of the violations, and seven were considered “significant” because there were children between the ages of six and eighteen. Considering these factors, I have determined that \$82,896, the proposed penalty, is the appropriate civil penalty to be assessed against Respondent in that it is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with the Act.
26. In doing so, I have taken into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to Respondent, the ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require, which are all factors identified by Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2).
27. In assessing this penalty, I find persuasive the rationale for the calculations of the assessed penalty set forth in the Complaint and in the Complainant’s Memorandum in

Support of Motion for Default filed in this proceeding, and incorporate such rationale by reference into this Order.

### III. Order

1. For failing to file an Answer to the Complaint, Respondent is hereby found in **DEFAULT**.
2. Respondent, Investment Properties, L.L.C., is assessed a civil administrative penalty in the amount of \$82,896.
3. Payment of the full amount of this civil penalty shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below. Payment shall be made by submitting a certified or cashier's check in the amount of \$82,896, payable to "Treasurer, United States of America," and mailed to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
P.O. Box 360197M  
Pittsburgh, PA 15251

4. A transmittal letter identifying the subject case and EPA docket number as well as Respondent's name and address, must accompany the check.
5. If Respondent fails to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. *See*, 31 U.S.C. § 3717; 40 C.F.R. § 13.11.
6. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

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LeAnn Jensen  
Regional Judicial Officer

Dated:



## Exhibit 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	<b>ADMINISTRATIVE COMPLAINT</b>
	)	<b>AND</b>
Investment Properties, L.L.C.	)	<b>NOTICE OF</b>
474 Fort Hill Road	)	<b>OPPORTUNITY FOR HEARING</b>
Gorham, ME 04038	)	
	)	
Respondent	)	Docket No. TSCA-01-2018-0017
	)	
	)	Proceeding under Section 16(a) of the
	)	Toxic Substances Control Act,
	)	15 U.S.C. § 2615(a)

**I. STATEMENT OF AUTHORITY**

1. Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), issues this administrative Complaint and Notice of Opportunity for Hearing under Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

**II. NATURE OF THE ACTION**

2. This Complaint notifies Investment Properties, L.L.C. (“Respondent”) that EPA has determined that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Disclosure of Known Lead Based Paint and/or Lead Based Paint Hazards Upon Sale or Lease of Residential Property,” as set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). EPA seeks civil penalties

pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by EPA of civil and/or criminal penalties.

### **III. STATUTORY AND REGULATORY BASIS**

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint (“LBP”), and that the ingestion of lead from deteriorated or abraded LBP is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of LBP hazards is taken into account in the rental of homes and apartments.

4. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subparts E and F.

5. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act’s transaction requirements is termed “target housing,” and is defined as any housing constructed prior to 1978, excepting housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

6. Pursuant to 40 C.F.R. § 745.103, “lessor” means any entity that offers target housing for lease, rent, or sublease.

7. The LBP Disclosure Rule regulations set forth at 40 C.F.R. Part 745, Subpart F, require that the lessors of target housing must take the following actions, among others, prior to lessees becoming obligated to lease target housing:

- a. Provide to lessees an EPA-approved lead hazard information pamphlet;

- b. Disclose to lessees the presence of any known LBP and/or LBP hazards in the target housing being leased;
  - c. Include, either within or as an attachment to the lease contract, a Lead Warning Statement; and
  - d. Provide lessees with any records or reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased.
8. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule is a violation of Section 409 of TSCA.
9. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of Section 409 of TSCA shall be liable to the United States for a civil penalty.
10. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provides that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred on or after November 2, 2015, are subject to penalties up to \$17,395 per violation, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. § 19.4. See also 83 Fed. Reg. 1190 (Jan. 10, 2018).

#### IV. GENERAL ALLEGATIONS

11. Respondent is a limited liability company formed under the laws of the State of Maine.
12. Respondent owns or owned nine residential buildings in Lewiston, Maine constructed prior to 1978, that contain a total of 55 separate apartments.

13. At the time of the violations alleged in this Complaint, Respondent managed and offered for lease residential apartments in its buildings in Lewiston, Maine, including the apartments referenced in Paragraph 16 below.

14. Each of the properties listed in Paragraph 136 were constructed prior to 1978, and are, therefore, “target housing” as defined in 40 C.F.R. § 745.103.

15. Pursuant to 40 C.F.R. § 745.103, Respondent is the “lessor” of the properties listed in Paragraph 16.

16. Respondent offered for lease the following units of residential housing to lessees on the dates set forth below:

- a. 73 Bartlett Street #1: Lease commenced on August 6, 2015.
- b. 141 Bartlett Street #1: Lease commenced August 13, 2015.
- c. 141 Bartlett Street #2: Lease commenced December 15, 2014.
- d. 166 Bartlett Street #1: Lease commenced October 6, 2015.
- e. 166 Bartlett Street #2: Lease commenced March 16, 2015.
- f. 166 Bartlett Street #3: Lease commenced February 2, 2015
- g. 184 Bartlett Street #2: Lease commenced August 31, 2015.
- h. 184 Bartlett Street, 3<sup>rd</sup> floor front: Lease commenced March 24, 2016.
- i. 182 Blake Street #3: Lease commenced August 19, 2015.

17. In Spring 2016, EPA received complaints from an attorney, Nicole R. Bissonnette, KIDS Legal, Lewiston, Maine, who represented two tenants that leased separate units at Respondent’s property located at 184 Bartlett Street, Lewiston, Maine 04240. According to Attorney Bissonnette, the State of Maine had issued one or more lead abatement orders to Respondent concerning 184 Bartlett Street. She also sent EPA copies of these orders and of

her clients' leases. In response, EPA performed an inspection of Respondent's properties in Lewiston on June 30, 2016.

18. By correspondence dated February 18, 2016, and during face-to-face meetings on June 30, 2016 and August 30, 2016, EPA provided compliance assistance to Respondent, including Respondent's principal, Frederick Lockwood, and Respondent's assistant, Diego Martinez.

19. During a meeting on June 30, 2016, Respondent provided EPA Inspectors with copies of leases. At this meeting, EPA provided Respondent with a "Notice of Potential Violations of the Disclosure Rule."

20. Based upon information obtained from Respondent on June 30, 2016 and August 30, 2016, and EPA's additional investigation, EPA has identified the following violations of the Act and the Disclosure Rule.

## V. VIOLATIONS

### **COUNT I: Failure of Respondent to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet**

21. Complainant re-alleges paragraphs 1 through 20.

22. Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under a contract to lease target housing, a lessor must provide lessee with an EPA-approved lead hazard information pamphlet, "Protect your Family from Lead in the Home."

23. Respondent failed to provide the EPA-approved pamphlet to the lessee of 141 Bartlett Street #1 before the lessee was obligated under a contract to lease such target housing.

24. Respondent failed to provide the EPA-approved pamphlet to the lessee of 184 Bartlett Street 3<sup>rd</sup> floor front before the lessee was obligated under a contract to lease such target housing.

25. Respondent's failure to provide the EPA-approved pamphlet to the lessees of target housing described in Paragraphs 23 and 24 before the lessees became contractually obligated to lease said housing constitutes two (2) violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

**COUNT II: Failure of Respondent to Include a Statement by the Lessor Disclosing the Presence of Known LBP or Hazards, or Lack of Knowledge Thereof**

26. Complainant re-alleges Paragraphs 1 through 25.

27. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include as an attachment or within the lease contract a statement by the lessor disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating no knowledge of the presence of LBP and/or LBP hazards.

28. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on August 6, 2015, for 73 Bartlett Street #1.

29. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on August 13, 2015, for 141 Bartlett Street #1.

30. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on December 15, 2014, for 141 Bartlett Street #2.

31. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on October 6, 2015, for 166 Bartlett Street #1.

32. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on March 16, 2015, for 166 Bartlett Street #2.

33. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on February 2, 2015, for 166 Bartlett Street #3.

34. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on August 31, 2015, for 184 Bartlett Street #2.

35. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on March 24, 2016, for 184 Bartlett Street, 3<sup>rd</sup> floor front.

36. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased,



or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on August 19, 2015, for 182 Blake Street #3.

37. Respondent's failure to include as attachments or within the lease contracts listed in Paragraphs 28 through 36, above, statements by the lessor disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating no knowledge of the presence of LBP and/or LBP hazards, constitutes nine (9) violations of 40 C.F.R.

§ 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

**COUNT III: Failure of Respondent to Include a List of Any Records Available to the Lessor that Pertain to LBP or Hazards in the Housing, or the Failure to Indicate That No Such Records Exist**

38. Complainant re-alleges Paragraphs 1 through 37.

39. Pursuant to 40 C.F.R. § 745.113(b)(3), a contract to lease target housing must include as an attachment or within the contract to lease target housing a list of any records or reports available to the lessor that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist.

40. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on August 6, 2015, for 73 Bartlett Street #1.

41. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on August 13, 2015, for 141 Bartlett Street #1.

42. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no

such records exist, in the lease signed by a lessee on December 15, 2014, for 141 Bartlett Street #2.

43. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on October 6, 2015, for 166 Bartlett Street #1.

44. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on March 16, 2015, for 166 Bartlett Street #2.

45. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on February 2, 2015, for 166 Bartlett Street #3.

46. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on August 31, 2015, for 184 Bartlett Street #2.

47. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on March 24, 2016, for 184 Bartlett Street, 3<sup>rd</sup> floor front.

48. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on August 19, 2015, for 182 Blake Street #3.

49. Respondent's failure to include as attachments or within the lease contracts listed in Paragraphs 40 through 48, above, lists of any records or reports available to the lessor that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, constitutes nine (9) violations of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

## **VI. PROPOSED CIVIL PENALTY**

50. Based on the violations described in this Complaint, EPA seeks to assess a total civil penalty of \$82,896.00 against the Respondent. The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. § 745.118(f), as well as the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and its implementing regulations at 40 C.F.R. Part 19.

51. In determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that Complainant consider the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, the effect of the proposed penalty on their ability to continue in business, any history of prior such violations, their degree of culpability, and such other matters as justice may require.

To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (the "ERP"), a copy of which is enclosed with this Complaint, including updates of December 6,

2013 and January 11, 2018. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

Count I: Failure to Provide the EPA-approved Pamphlet.

For two (2) violations of 40 C.F.R. § 745.107(a)(1), EPA proposes a total penalty of \$18,740.00.

52. Count II: Failure to Include a Statement by the Lessor Disclosing the Presence of Known LBP or Hazards, or Lack of Knowledge Thereof.

For nine (9) violations of 40 C.F.R. § 745.113(b)(2), EPA proposes a total penalty of \$34,040.00.

53. Count III: Failure to Include a List of Any Records Available to the Lessor that Pertain to LBP or Hazards in the Housing, or the Failure to Indicate That No Such Records Exist.

For nine (9) violations of 40 C.F.R. § 745.113(b)(3), EPA proposes a total penalty of \$11,240.00.

54. Inflation Multiplier: Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. § 19.4, EPA has applied inflation penalty adjustment multipliers yielding a total increase in the penalty of \$18,876 to account for inflation.

55. A Penalty Calculation memorandum is attached as Attachment A.

## **VII. QUICK RESOLUTION**

56. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's or certified check, payable to "The Treasurer, United States of America." The check should also note the docket number of this Complaint (TSCA-01-2018-0017) and should be forwarded to:

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

57. In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORC 04-6  
Boston, Massachusetts 02109-3912

and

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES 04-2  
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondent need not file an Answer. If Respondent agrees to pay the penalty but needs additional time, Respondent may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondent need not file an Answer, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default. See 40 C.F.R. § 22.18(a).

58. Any settlement in this matter shall be made final by the issuance of a written Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

### **VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

59. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint. To avoid being found in default, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (ORC 04-6)  
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Audrey Zucker, the attorney assigned to represent EPA in this matter, at:

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (OES 04-2)  
Boston, Massachusetts 02109-3912

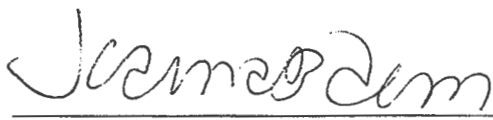
60. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

**IX. INFORMAL SETTLEMENT CONFERENCE**

61. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is encouraged to contact Audrey Zucker, Enforcement Counsel, at (617) 918-1788, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted to avoid default. Audrey Zucker, Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

2/6/18  
Date

  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1



## ATTACHMENT A

### **In the Matter of Investment Properties, L.L.C.**

**Docket Number: TSCA-01-2018-0017**

### **PROPOSED PENALTY SUMMARY**

The following provides the justification for the proposed penalty calculation in the administrative penalty action against Investment Properties, L.L.C., which seeks to assess a civil penalty in the amount of ~~\$82,896.00~~ for alleged violations of the Lead Disclosure Rule. The penalty was calculated according to EPA's December 2007 *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* ("Disclosure Rule ERPP"); EPA Memorandum, "Amendments to The U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)," dated December 6, 2013; and the EPA Memorandum "Adjustments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule," dated January 11, 2018. A breakdown of the penalty by count is set forth below.

### **1. DISCLOSURE RULE VIOLATIONS**

#### **COUNT I. Failure to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet**

**Provision Violated:** 40 C.F.R. § 745.107(a)(1) requires that, before a lessee is obligated under to a contract to lease target housing, the lessor must provide the lessee with an EPA-approved lead hazardous information pamphlet, "Protect your Family from Lead in the House."

**Circumstance Level:** Failure to provide the lessee with an EPA-approved lead hazardous information pamphlet, "Protect your Family from Lead in the House" pursuant to 40 C.F.R. § 745.107(a)(1) results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.107(a)(4) is a *Level 1* violation.

**Extent of Harm:** The Disclosure Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the



ages of six and eighteen warrant a **significant** extent factor. The documented absence of children or pregnant women warrants a **minor** extent factor.

Respondent, Investment Properties, L.L.C., failed to provide the EPA-approved lead hazard information pamphlet, "Protect your Family from Lead in Your Home" to lessees of target housing before the lessees became contractually obligated to lease said housing:

Respondent/ Owner/Lessor: Investment Properties, L.L.C.	Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity -Based Penalty
Investment Properties, L.L.C.	141 Bartlett Street #1	8/13/2015	1 child: 8 yo	Significant	\$7,740
Investment Properties, L.L.C.	184 Bartlett Street, 3 <sup>rd</sup> floor front	3/24/2016	2 children: 4 and 10 yo	Major	\$11,000

**Sub - Total:        \$18,740\***

**\*Total penalty for all violations,**

**Total Count I = \$18,740.00**

**COUNT II. – Failure to Include a Statement by the Lessor Disclosing the Presence of Known Lead-Based Paint or Lead-Based Paint Hazardous, or Lack of Knowledge Thereof**

**Provision Violated:** 40 C.F.R. § 745.113(b)(2) requires lessor to include, in a contract to lease target housing an attachment or within the lease 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.

**Circumstance Level:** The failure to provide a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or by not indicating that no knowledge exists results in a *medium probability* of impacting human health and the environment. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

**Extent of Harm:** The Disclosure Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a **major** extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a **significant** extent factor. The documented absence of children or pregnant women warrants a **minor** extent factor.

Respondent, Investment Properties, L.L.C., failed to disclose to the following lessees the presence of any known lead-based paint or lead-based paint hazards in the target housing being leased and/or failed to provide the lessees any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased:

Respondent/ Owner/Lessor: Investment Properties, L.L.C.	Address	Approximate Start of Lease Term	Children /Ages	Extent of Harm	Gravity-Based Penalty
Investment Properties, L.L.C.	73 Bartlett Street #1	8/6/2015	None	Minor	\$770
Investment Properties, L.L.C.	141 Bartlett Street #1	8/13/2015	1 child: 8 yo	Significant	\$5,160
Investment Properties, L.L.C.	141 Bartlett Street #2	12/15/2014	None	Minor	\$770
Investment Properties, L.L.C.	166 Bartlett Street #1	10/6/2015	3 children: 7, 9, and 14 yo	Significant	\$5,160
Investment Properties, L.L.C.	166 Bartlett Street #2	3/16/2015	None	Minor	\$770
Investment Properties, L.L.C.	166 Bartlett Street #3	2/2/2015	1 child: 6 yo	Major	\$7,740
Investment Properties, L.L.C.	184 Bartlett Street #2	8/31/2015	None	Minor	\$770
Investment Properties, L.L.C.	184 Bartlett Street 3 <sup>rd</sup> Fl. Front	3/24/2016	2 children: 4 and 10 yo	Major	\$7,740
Investment Properties, L.L.C.	182 Blake Street #3	8/19/2015	1 Child: 17 yo	Significant	\$5,160

**Sub - Total: \$34,040\***

**\*Total penalty for all violations,  
Total Count II =**

**\$34,040.00**

**COUNT III. – Failure to Include a List of Any Records Available to the Lessor that Pertain to Lead-Based Paint or Lead-Based Paint Hazards in the Housing, or the Failure to Indicate That No Such Records Exist**

**Provision Violated:** 40 C.F.R. § 745.113(b)(3) requires lessor to include as an attachment to or within the lease contract to lease target housing, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist.

**Circumstance Level:** The failure to provide a list of any records or reports available to the lessor that pertain to lead-based paint and/or lead-based paint hazards or indicate that no records exist results in a *low probability* of impacting human health and the environment. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.113(b)(3) is a *Level 5* violation.

**Extent of Harm:** The Disclosure Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The documented absence of children or pregnant women warrants a *minor* extent factor.

Respondent, Investment Properties, L.L.C., failed to include as an attachment to or within the lease contract to lease target housing, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist:

<b>Respondent/ Owner/Lessor: Investment Properties, L.L.C.</b>	<b>Address</b>	<b>Approximate Start of Lease Term</b>	<b>Children /Ages</b>	<b>Extent of Harm</b>	<b>Gravity-Based Penalty</b>
Investment Properties, L.L.C.	73 Bartlett Street #1	8/6/2015	None	Minor	\$260
Investment Properties, L.L.C.	141 Bartlett Street #1	8/13/2015	1 child: 8 yo	Significant	\$1,680
Investment Properties, L.L.C.	141 Bartlett Street #2	12/15/2014	None	Minor	\$260

Investment Properties, L.L.C.	166 Bartlett Street #1	10/6/2015	3 children: 7, 9, and 14 yo	Significant	\$1,680
Investment Properties, L.L.C.	166 Bartlett Street #2	3/16/2015	None	Minor	\$260
Investment Properties, L.L.C.	166 Bartlett Street #3	2/2/2015	1 child: 6 yo	Major	\$2,580
Investment Properties, L.L.C.	184 Bartlett Street #2	8/31/2015	None	Minor	\$260
Investment Properties, L.L.C.	184 Bartlett Street 3 <sup>rd</sup> Fl. Front	3/24/2016	2 children: 4 and 10 yo	Major	\$2,580
Investment Properties, L.L.C.	182 Blake Street #3	8/19/2015	1 Child: 17 yo	Significant	\$1,680

**Sub - Total: \$11,240\***

**\*Total penalty for all violations,  
Total Count III =**

**\$11,240.00**

**Proposed Penalties:**

**Count I: \$18,740  
Count II: \$34,040  
Count III: \$11,240**

**1018 Sub-Total: \$64,020  
Inflation adj.: +\$18,876\*  
**Total: \$82,896****

\*\$12,394.60 added to the Proposed Penalty amounts for the violations regarding the lease transaction at 184 Bartlett Street 3rd Fl. Front using Multiplier = 1.58136, according to EPA Memorandum from Susan Parker Bodine, Assistant Administrator, titled "Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 1018 Civil Monetary Penalty Inflation Adjustment Rule," dated January 11, 2018;

\*\$6,482.96 added to the Proposed Penalty amounts for violations regarding all other lease transactions using Multiplier = 1.1518, according to EPA Memorandum, from Cynthia Giles, Assistant Administrator, titled "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)," dated December 6, 2013.