

FILED
MAY 19 2005

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of

Frank J. Davis,

Respondent

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Docket No. TSCA-05-2007-0002

Order

This proceeding arises under the authority of Section 16(a) of the Toxic Substances Control Act ("TSCA" or "the Act"), 15 U.S.C. § 2615(a). The purpose of this Order is to direct parties to exchange prehearing information in accordance with Rule 22.19 of 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). The parties are directed to provide the following information:

By Complainant and Respondents:

1. Desired or required location of the hearing. *See* Rules 22.19(d) and 22.21(d).
2. A list of prospective witnesses, a brief summary of their anticipated testimony, and a copy of each document or exhibit to be proffered in evidence to the extent not covered by the specific requests below.

By Complainant:

1. State the factual basis for the allegation in paragraph 16 of the complaint that Frank J. Davis ("Respondent") owned the following residential rental properties located at the following addresses in Indianapolis, Indiana: 1838 Brookside Avenue, 2822 English Avenue, 3780 North Parker, 2039 Roosevelt Avenue, 402 South Rural, 815 North Rural, 725 North Sherman Drive, 2518 North Temple Avenue, 4506 E. Washington, and 2140 East 34th Street (referred individually as "Residential Rental Property" and collectively as the "Residential Rental Properties").
2. State the factual basis, including any information, for the assertions in paragraphs 17 and 18 of the complaint that each Residential Rental Property and each rental unit within such property was constructed prior to 1978 and is therefore, considered "target housing" as defined in 40 C.F.R. § 745.103.
3. Provide a copy or state the factual basis for the assertion in paragraph 19 of the complaint that notice was given to Respondent for the April 29, 2005, scheduled inspection at Respondent's

home office located at 623 Sunridge Court, Indianapolis, Indiana, with representatives from EPA and HUD, in order to monitor compliance with Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, found at 42 U.S.C. § 4851, and its implementing regulations found at 40 C.F.R. Part 745, Subpart F.

4. Provide a copy of the Certified Request for Information Letter issued to Respondent on May 3, 2005 by EPA, referred to in paragraph 20 of the complaint.

5. Provide a copy of the administrative subpoena *duces tecum* ("subpoena") issued on June 29, 2005, pursuant to Section 11 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2610 seeking copies of all agreements and lead-based disclosure documentation for the rental and sales transactions at all properties owned and/or managed by Respondent from June 1, 2002, to the date of the subpoena.

6. Provide a copy of the Petition for Enforcement of Subpoena filed by the United States Attorney for the Southern District of Indiana, referred to in paragraph 22 of the complaint.

7. Provide a copy of Respondent's response to the subpoena received by EPA on January 6, 2006.

8. Provide a copy of the notices from the Marion County Health Department regarding violations of Chapter 10 of the Code of the Health and Hospital Corporation of Marion County, Indiana for the 4506 East Washington Street, 2822 English Avenue, and 725 North Sherman Drive properties received by Respondent on August 12, 2003, September 19, 2003, and February 6, 2004, respectively, referred to in paragraph 24 of the complaint..

9. State the factual basis for the allegation in paragraph 25 of the complaint that Respondent, as owner and lessor of the Residential Rental Properties, offered for lease the following properties under the following dates of lease and provide the factual basis that the term of occupancy covered greater than 100-days as asserted in paragraph 26 of the complaint.

Address	Date of Lease
1838 Brookside Avenue	11/14/2003
2822 English Avenue	03/30/2004
3780 North Parker	08/22/2002
2039 Roosevelt Avenue	06/01/2003
402 South Rural	04/11/2003
815 North Rural	04/24/2003
725 North Sherman Drive	09/16/2002
2518 North Temple Avenue	08/01/2003
4506 East Washington	06/01/2002
2140 East 34 th Street	07/10/2002

10. Provide the factual basis for the assertion in paragraph 29 of the complaint that Respondent, as owner of the target housing, transferred legal title to two of the Residential Rental Properties located at 1838 Brookside Avenue and 725 North Sherman Drive by entering into written sales agreements ("sales contracts") with individuals on 04/15/2005 and 05/17/2005, respectively.

11. Provide a copy of the letter, dated November 13, 2006, wherein Respondent was informed that EPA was planning on filing a civil administrative complaint.

12. State the factual basis for the allegations in paragraphs 37 through 46 (Counts 1 through 10) of the complaint that for each of the Residential Rental Properties, Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement prior to the time the lessees became obligated under the dated contracts to lease the properties, supra paragraph 9, in violation of 40 C.F.R. § 745.113(b)(1); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

13. Provide the factual basis for the allegations in paragraphs 50 and 51 (Counts 11 and 12) of the complaint that Respondent failed to include, within or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, to the lessee at 725 North Sherman Drive, Indianapolis, Indiana under the contract, dated September 16, 2002, and to the lessee at 2822 English Avenue, Indianapolis, Indiana under the contract, dated March 30, 2004, prior to the time the lessees became obligated under the mentioned contracts in violation of 40 C.F.R. § 745.113(b)(2); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

14. State the factual basis for the allegations in paragraphs 55 through 64 (Counts 13 through 22) of the complaint that Respondent failed to include, within or as an attachment to the contracts, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, to the lessees prior to the time the lessees at the referenced locations became obligated under dated contracts, supra paragraph 9, in violation of 40 C.F.R. § 745.113(b)(3); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

15. Provide the factual basis for the allegations in paragraphs 68 through 77 (Counts 23 through 32) of the complaint that Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet to the lessees at the locations, supra paragraph 9, prior to the time the lessees became obligated under the referenced dated contracts, in violation of 40 C.F.R. § 745.113(b)(4); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

16. State the factual basis for the allegations in paragraphs 81 through 90 (Counts 33 through 42) of the complaint that Respondent did not include, within or as an attachment to the contracts, the signatures of the lessor and the lessees certifying to the accuracy of their statements along with the dates of such signature to the lessees at the locations, supra paragraph 1, prior to the times the lessees became obligated under dated contracts, supra paragraph 9, in violation of 40 C.F.R. § 745.113(b)(6); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

17. State the factual basis for the allegations in paragraphs 94 and 95 (Counts 43 and 44) of the complaint that Respondent failed to include, within or as an attachment to the sales contracts, a Lead Warning Statement to the purchasers, as listed in paragraph 10, prior to the time the purchasers became obligated under the contracts in violation of 40 C.F.R. § 745.113(a)(1); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

18. State the factual basis for the allegations in paragraphs 99 and 100 (Counts 45 and 46) of the complaint that Respondent failed to include, within or as an attachment to the sales contracts, a statement disclosing either the presences of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, to the purchasers, as listed in paragraph 10, prior to the time the purchasers became obligated under the contracts in violation of 40 C.F.R. § 745.113(a)(2); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

19. State the factual basis for the allegations in paragraphs 104 and 105 (Counts 47 and 48) of the complaint that Respondent failed to include, within or as an attachment to the sales contracts, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, to the purchasers, as listed in paragraph 10, prior to the time the purchasers became obligated under the contracts in violation of 40 C.F.R. § 745.113(a)(3); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

20. State the factual basis for the allegations in paragraphs 109 and 110 (Counts 49 and 50) of the complaint that Respondent failed to include, within or as an attachment to the sales contracts, a statement by the purchasers affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) and (a)(3), and the lead hazard information pamphlet to the purchasers, as listed in paragraph 10, prior to the time the purchasers became obligated under the contracts in violation of 40 C.F.R. § 745.113(a)(4); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

21. State the factual basis for the allegations in paragraphs 114 and 115 (Counts 51 and 52) of the complaint that Respondent failed to include, within or as an attachment to the sales contracts, a statement by the purchasers that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity to conduct such inspection, as listed in paragraph 10, prior to becoming obligated under such contracts in violation of 40 C.F.R. § 745.113(a)(5); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

22. State the factual basis for the allegations in paragraphs 119 and 120 (Counts 53 and 54) of the complaint that Respondent failed to include, within or as an attachment to the sales contracts, the signatures of the sellers, agent, and purchasers certifying to the accuracy of their statements, along with the dates of such signatures, to the purchasers, as listed in paragraph 10, prior to the time the purchasers became obligated under the contracts in violation of 40 C.F.R. § 745.113(a)(7); 40 C.F.R. § 745.100; 42 U.S.C. § 4852d(b)(5); and Section 409 of TSCA, 15 U.S.C. § 2689.

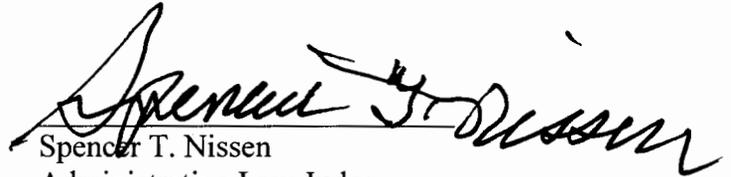
23. Provide a copy of any worksheets used in computing the proposed penalty and a copy of any documents such as a D & B report used in determining Respondent's ability to pay the proposed penalty.

By Respondent:

1. If not provided in responses to specific items below, summarize any facts supporting denial of the violations alleged in the complaint.
2. Provide a copy of contracts for renovation work, invoices or similar documents to support the allegation that all properties at the time of purchase were completely renovated which eliminated all possibilities of hazardous levels of lead-based paint. Presumably, "purchase" in the quoted sentence from the answer means lease agreements as well as contracts for sale.
3. Provide a copy of information concerning lead-based paint obtained from the Indianapolis Housing Agency, specify the form in which this information was provided to tenants and identify individuals who can testify that this information was provided to all tenants. State whether the information was furnished to tenants at the time contracts or lease agreements were entered into or at some other time. Explain answer.
4. Provide a copy of the personal letter given to every tenant "explaining [t]he possibilities of lead paint [on the premises] because the house [housing] was built before 1978."
5. State whether Respondent received notice of the joint EPA and HUD inspection scheduled for April 29, 2005, referred to in paragraph 19 of the complaint.
6. If Respondent is contending that the proposed penalty exceeds his ability to pay, provide financial statements, copies of income tax returns or other data to support such contention.

Responses to this Order should be provided to the Regional Hearing Clerk, the other party, and to the undersigned on or before June 15, 2007.

Dated this 14th day of May, 2007.


Spencer T. Nissen
Administrative Law Judge

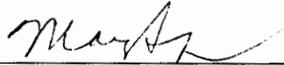
* In accordance with Rule 22.5(c)(4), the parties are directed to promptly notify the Regional Hearing Clerk, all other parties, and the ALJ of any change in address and/or telephone number.

** The parties are informed that the use of E-Mail to communicate with this office is considered inappropriate.

**In the ADR Matter of *Frank J. Davis*, Respondent.
Docket No. TSCA-05-2007-0002**

CERTIFICATE OF SERVICE

I certify that the foregoing **Order**, dated May 14, 2007, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Sonja Brooks-Woodard
Regional Hearing Clerk
U.S. EPA, Region V, MC-13J
77 West Jackson Blvd., 13th Floor
Chicago, IL 60604-3590

One Copy by Certified Mail to:

Eileen L. Furey, Esq.
Estrella Calvo, Esq.
Associate Regional Counsel
U.S. EPA, Reg. V
77 West Jackson Blvd., 13th
Chicago, IL 60604-3590

One Copy by Certified Mail to:

Frank J. Davis
623 Sunridge Court
Indianapolis, IN 46239

**Dated: May 14, 2007
Washington, D.C.**