



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 13 2011

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7673 2581

Ms. Lorri J. Britsch  
Ritter, Robinson, McCreedy & James, Ltd.  
405 Madison Avenue, Suite 1850  
Toledo, Ohio 43604

Re: In the Matter of Thomas J. and Dianne M. Woodruff, No: **TSCA-05-2012-0007**

Dear Ms. Britsch:

Enclosed is a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Thomas J. and Dianne M. Woodruff, under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact Ann Coyle, Associate Regional Counsel at (312) 886-2248.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

RECEIVED  
DEC 15 2011  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No. TSCA-05-2012-0007
	)	
Thomas J. and Dianne M. Woodruff	)	Proceeding to Assess a Civil Penalty
Luckey, Ohio,	)	Under Section 16(a) of the Toxic Substances
	)	Control Act, 15 U.S.C. § 2615(a)
Respondents.	)	
_____	)	

**Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondents are Thomas J. and Dianne M. Woodruff, individuals doing business in the State of Ohio.

**Statutory and Regulatory Background**

4. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Act), at 42 U.S.C. §§ 4851-4856, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and

sales. Section 1018 of the Act, 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. EPA promulgated regulations codified at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of one to four residential dwellings were required to comply with the Disclosure Rule by December 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which impose certain requirements on the sale or lease of target housing. 40 C.F.R. § 745.100.

7. 40 C.F.R. § 745.103 defines “target housing” as 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.

8. 40 C.F.R. § 745.103 defines “lessor” as 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.

9. 40 C.F.R. § 745.103 defines “lessee” as 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.

10. 40 C.F.R. § 745.100 requires, among other things, that the lessor of target housing complete the required disclosure activities before a lessee is obligated under any contract to lease target housing.

11. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1); a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing with any additional supporting information available, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards; a list of any records or reports available to the lessor that have been provided to the lessee regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records are available; a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements to the best of their knowledge.

12. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing or refusing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

13. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997, through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

### **General Allegations**

14. Complainant incorporates paragraphs 1 through 13 of this Complaint as if set forth in this paragraph.

15. At all times relevant to this Complaint, Respondents owned a residential dwelling, consisting of at least one residential dwelling unit, at 5086-5086½ Fremont Pike, Perrysburg, Ohio (Respondents' Property).

16. Respondents' Property was constructed prior to 1978.

17. Respondents' Property and each dwelling unit within Respondents' Property is "target housing" as defined in 40 C.F.R. § 745.103.

18. Publicly available documents from August 2011, identify Thomas J. and Dianne M. Woodruff as the purchasers of the Property (Parcel Number U69-612-050000053000) on March 28, 1994.

19. On July 5, 2006, Respondents entered into a written lease agreement (contract) with individuals for the lease of a residential dwelling unit at 5086½ Fremont Pike, Perrysburg, Ohio.

20. The term of occupancy set forth in the contract referenced in paragraph 19, above, was July 1, 2006, through June 30, 2007.

21. The contract referenced in paragraph 19, above, covered a term of occupancy greater than 100-days.

22. Respondents offered for lease a residential dwelling unit and individuals entered into a contract on the dates listed in paragraph 19, above, to lease that dwelling.

23. Respondents are "lessors," as defined in 40 C.F.R. § 745.103.

24. Each individual who signed a lease to pay rent in exchange for occupancy of a dwelling, referenced in paragraph 19, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

25. On or about August 31, 2006, Respondents were issued an Order to Control Lead Hazards at 5086½ Fremont Pike, Perrysburg, Ohio, by the Wood County Health District (Order). The Ohio Department of Health had conducted a public health lead risk assessment at the Property on August 24, 2006, and found lead hazards that were contributing, in whole or in part, to a child's lead poisoning. The Order identified lead hazards in the Property and required that they be controlled within 45 days of Respondents' receipt of the Order.

26. On April 18, 2011, EPA advised Respondents by letter that EPA was planning to file a civil administrative complaint against Respondents for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint. EPA asked Respondents to submit specific financial documents if Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty.

27. On April 29, 2011, Respondents replied to the pre-filing notice letter referred to in paragraph 26, above, and asserted an inability to pay a penalty but did not provide any documents or other factual information supporting their position.

28. In telephone conversations on or about June 17 and July 15, 2011, and in email messages on July 7 and July 27, 2011, Complainant reiterated the importance of Respondents providing their financial information to EPA if they wished to assert an inability to pay the proposed penalty.

29. On June 10, 2011, Respondents provided Complainant with information regarding how much money they spent remediating the property; however, this work was not done in accordance with the Order or the Disclosure Rule.

30. As of the date of this filing, Respondents have provided Complainant with no financial information. Complainant has considered all of the information provided by Respondents in assessing the alleged violations and proposing a penalty.

31. Based on publicly available information obtained in August 2011, Respondents either individually or together with others, are the taxpayers for 20 parcels of property in Wood County, Ohio, with a total estimated fair market value of \$1,658,400 and an estimated \$426,151 in outstanding mortgages, leaving approximately \$1,232,249 in equity for those properties. Respondents also have other personal property (approximately 29 motor vehicles, two trailers, two motorcycles, two snowmobiles and one jet ski) with a total estimated retail value of at least \$453,750. Since January 1, 2008, Respondents have sold at least seven motor vehicles with a total estimated retail value of \$129,141.

32. Respondents have the ability to pay the proposed penalty of \$27,090.

33. On June 11, 2011, Respondents and EPA entered into an agreement to toll until December 28, 2011, the statute of limitations to file a cause of action by EPA against Respondents under Section 16 of the Act, 15 U.S.C. § 2615, relating to violations of Section 1018 of the Act and the Disclosure Rule.

#### **Count 1**

34. Complainant incorporates paragraphs 1 through 33 of this Complaint as if set forth in this paragraph.

35. Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated July 5, 2006, for 5086½ Fremont Pike, Perrysburg, Ohio, a Lead Warning Statement, as required by 40 C.F.R. § 745.113(b)(1).



36. Respondents' failure to include, either within the contract or as an attachment, a Lead Warning Statement for the leasing transaction referred to in paragraph 35, above, constitutes one violation of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 2**

37. Complainant incorporates paragraphs 1 through 33 of this Complaint as if set forth in this paragraph.

38. Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated July 5, 2006, for 5086½ Fremont Pike, Perrysburg, Ohio, a statement by the lessors 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, as required by 40 C.F.R. § 745.113(b)(2).

39. Respondents' failure to include, either within the contract or as an attachment, a statement by the lessor disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased or a lack of knowledge of such presence for the leasing transaction referred to in paragraph 38, above, constitutes one violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 3**

40. Complainant incorporates paragraphs 1 through 33 of this Complaint as if set forth in this paragraph.

41. Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated July 5, 2006, for 5086½ Fremont Pike, Perrysburg, Ohio, a list of any records or reports available to the lessors regarding lead-based paint and/or lead-based



paint hazards in the housing that have been provided to the lessee or a statement that no such records are available, as required by 40 C.F.R. § 745.113(b)(3).

42. Respondents' failure to include, either within the contract or as an attachment, a list of any records or reports available to the lessors regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee, or a statement that no such records are available, for the leasing transaction referred to in paragraph 41, above, constitutes one violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

#### **Count 4**

43. Complainant incorporates paragraphs 1 through 33 of this Complaint as if set forth in this paragraph.

44. Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated July 5, 2006, for 5086½ Fremont Pike, Perrysburg, Ohio, a statement by the lessees affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, as required by 40 C.F.R. § 745.113(b)(4).

45. Respondents' failure to include, either within the contract or as an attachment, a statement by the lessees affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696 for the leasing transaction referred to in paragraph 44, above, constitutes one violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 5**

46. Complainant incorporates paragraphs 1 through 33 of this Complaint as if set forth in this paragraph.

47. Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated July 5, 2006, for 5086½ Fremont Pike, Perrysburg, Ohio, the signatures of the lessors and the lessees certifying to the accuracy of their statements and the dates of such signatures, as required by 40 C.F.R § 745.113(b)(6).

48. Respondents' failure to include, either within the contract or as an attachment, the signatures of the lessors and the lessees certifying to the accuracy of their statements and the dates of such signatures for the leasing transaction referred to in paragraph 47, above, constitutes one violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Proposed Civil Penalty**

49. Complainant proposes that the Administrator assess a civil penalty against Respondents for the violations alleged in this Complaint as follows:

<b>Count 1:</b> 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1).....	\$10,320
<b>Count 2:</b> 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2).....	\$7,740
<b>Count 3:</b> 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3).....	\$2,580
<b>Count 4:</b> 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4).....	\$5,160
<b>Count 5:</b> 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6).....	\$1,290
<b>Total Proposed Civil Penalty .....</b>	<b>\$27,090</b>

50. In determining the amount of a civil penalty, Section 16 of TSCA 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 factors as justice may require.

51. EPA calculates penalties by applying its Section 1018 - Disclosure Rule Enforcement Response Policy, dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that a Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

52. As stated in paragraph 26, above, by letter dated April 18, 2011, EPA advised Respondents that EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 of the Act and that Section 1018 authorizes the assessment of a civil administrative penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint, and to submit specific financial documents if Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty.

53. EPA, at least four times, requested that Respondents submit information so that EPA could factually consider the claimed inability to pay a penalty. Respondents have not provided any information.

54. Publicly available documents concerning real and personal property associated with Respondents reflect that they have substantial real estate assets, including numerous properties in Wood County, Ohio, and substantial personal assets, including numerous motor vehicles, trailers, motorcycles, snowmobiles and a jet ski. EPA has developed information reflecting that Respondents have estimated assets of at least \$1,685,999 and have sold personal property since January 1, 2008, with an estimated retail value of at least \$129,141. EPA has considered all of the available financial information and considered this information to develop the proposed penalty.

#### **Rules Governing This Proceeding**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

#### **Filing and Service of Documents**

Respondents must file with the Regional Hearing Clerk the original and one copy of each document Respondents intend to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Respondents must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Ann L. Coyle to receive any answer and subsequent legal documents that Respondents serve in this proceeding.

You may telephone Ms. Coyle at (312) 886-2248. Her address is:

Ann L. Coyle (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### **Penalty Payment**

Respondents may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

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

Respondents must include the case name and docket number on the check and in the letter transmitting the check. Respondents simultaneously must send copies of the check and transmittal letter to Ms. Coyle and to:

Julie Morris (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### **Answer and Opportunity to Request a Hearing**

If Respondents contest any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contend that they are entitled to judgment as a matter

of law, Respondents may request a hearing before an Administrative Law Judge. To request a hearing, Respondents must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, Respondents must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondents' written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondents have no knowledge of a particular factual allegation. Where Respondents state that they have no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondents' answer must also state:

- a. The circumstances or arguments that Respondents allege constitute grounds of defense;
- b. The facts that Respondents dispute;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondents request a hearing.

If Respondents do not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondents constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations.

Respondents must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

### **Settlement Conference**

Whether or not Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondents may contact Ms. Coyle at the address provided above.

Respondents' request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondents may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

### **Continuing Obligation to Comply**

Respondents' payment of the civil penalty will not satisfy Respondents' legal obligation to comply with TSCA and any other applicable federal, state, or local law.


### **Consent Agreement and Final Order**

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondents in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement



signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

12/13/11  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint of the civil administrative action involving Mr. Thomas J. and Dianne M Woodruff was filed on December 15, 2011, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7673 2581, along with a copy each of the to:

Ms. Lorri J. Britsch  
Ritter, Robinson, McCreedy & James, Ltd  
405 Madison Avenue, Suite 1850  
Toledo, Ohio 43604

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Ann Coyle, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. TSCA-05-2012-0007

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**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**