

08 SEP 30

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

REGIONAL HEARING OFFICE
EPA REGION 6

IN THE MATTER OF:	§	DOCKET NO. TSCA-06-2008-6099
	§	
ABERDEEN APARTMENTS	§	COMPLAINT
HOUSTON, TEXAS	§	AND
	§	NOTICE OF OPPORTUNITY
RESPONDENT	§	FOR HEARING

SECTION I
PRELIMINARY STATEMENT

This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 16 of the Toxic Substances Control Act, as amended (TSCA), 15 U.S.C. § 2615.

The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, U.S. Environmental Protection Agency (EPA), Region 6, the person to whom the authority has been delegated to issue such Complaints in the States that comprise Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Complainant will show that Aberdeen Apartments (Respondent) has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the Real Estate Notification and Disclosure Rule (Disclosure Rule) requirements of 40 C.F.R. Part 745, Subpart F, a rule promulgated under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 et seq.

SECTION II
ALLEGATIONS

1. EPA has jurisdiction of this matter under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 C.F.R. Part 745, Subpart F.
2. Respondent is Aberdeen Apartments, 3400 Woodchase Drive, Houston, Texas 77042-5500.
3. Respondent owns and/or manages housing which was constructed prior to 1978, which is defined as target housing within the meaning of 40 C.F.R. § 745.103.
4. Respondent is an entity that offers target housing for lease, rent, or sublease and is therefore a lessor as defined in 40 C.F.R. § 745.103.
5. On or about April 28, 2006, EPA conducted an inspection of Respondent to determine compliance with the Disclosure Rule.
6. On or about April 28, 2006, EPA Inspector Sharon Braby presented her EPA Inspector credentials to Lisa Barajas, representative of Respondent.
7. On or about April 28, 2006, Lisa Barajas, representative of Respondent, signed EPA Form 7740-3 for 1018, Notice of Inspection, thereby certifying voluntary consent for EPA to review and make copies of real estate notification and disclosure forms and any other documents relating to EPA's ability to determine compliance with the Disclosure Rule.
8. On or about April 27, 2004, the Respondent was the lessor of target housing at 9901 Richmond Avenue #0206, Houston, Texas.

9. On or about May 30, 2004, the Respondent was the lessor of target housing at 3400 Woodchase Drive #2105, Houston, Texas.

10. On or about April 28, 2005, the Respondent was the lessor of target housing at 3400 Woodchase Drive #1930, Houston, Texas.

11. On or about March 1, 2006, the Respondent was the lessor of target housing at 9901 Richmond Avenue #0520, Houston, Texas.

COUNT I

12. Paragraphs 1 through 11 are realleged and incorporated herein by reference.

13. 40 C.F.R. § 745.113(b)(2) requires the lessor to include 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 or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

14. Respondent failed to include as an attachment a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the contracts listed in Paragraphs 9 and 11.

15. Respondent's failure to include such a statement in accordance with 40 C.F.R. § 745.113(b)(2) constitutes two violations of Section 409 of TSCA.

COUNT II

16. Paragraphs 1 through 11 are re-alleged and incorporated herein by reference.

17. 40 C.F.R. § 745.113(b)(3) requires the lessor to include as an attachment, or within the contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist.

18. Respondent failed to attach either such a list to the contract to lease target housing or a statement no such records exist for the contracts listed **in** Paragraphs 9 and 11.

19. Respondent's failure to attach or include such a statement **in** the contracts to lease target housing in accordance with 40 C.F.R. § 745.113(b)(3) constitutes two violations of Section 409 of TSCA.

COUNT III

20. Paragraphs 1 through 11 are re-alleged and incorporated herein by reference.

21. 40 C.F.R. § 745.113(b)(6) requires the lessor to include as an attachment to the contract to lease target housing, or include within the contract, the signatures of the lessor and lessee, certifying to the accuracy of their statements, along with the dates of signatures.

22. Respondent failed to attach or include in the contract to lease target housing the signatures and dates of signatures of the lessor and lessee certifying to the accuracy of their statements **in** the contracts listed in Paragraphs 9 through 11.

23. Respondent's failure to include or attach the signatures and dates of signatures **in** accordance with 40 C.F.R. § 745.113(b)(6) constitutes three violations of Section 409 of TSCA.

SECTION III
PROPOSED CIVIL PENALTY

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d), and 40 C.F.R. § 745.118 authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615. Pursuant to 40 C.F.R. § 745.118(t), the penalty assessed for each violation shall not exceed \$11,000 (for violations occurring after July 28, 1997). For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior violations, the degree of culpability, and such other factors as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the statutory factors enumerated above and EPA's "Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy," dated December 2007, a copy of which is enclosed. This response policy provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint as shown below.

COUNT I

40 C.F.R. § 745.113(b)(2)				
Level 3	Minor Extent	X 2 @ \$770.00	1 each	\$1,540.00
Subtotal				\$1,540.00

COUNT II

40 C.F.R. § 745.113(b)(3)					
Level 5	Minor Extent	X 2 @ \$260.00	each	\$ 520.00	
Subtotal					\$520.00

COUNT III

40 C.F.R. § 745.113(b)(6)					
Level 6	Minor Extent	X 3 @ \$130.00	1 each	\$ 390.00	
Subtotal					\$390.00

Total Proposed Gravity-Based Penalty \$2,450.00

Payment of the total amount of \$2,450.00 may be made by certified or cashier's check

payable to the Treasurer, United States of America, and remitted to:

U.S. EPA
 Region 6
 P.O. Box 371099M
 Pittsburgh, PA 15251-7099

The Docket No. TSCA-06-2008-6099 should be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notice of such payment, including a copy of the cashier's or certified check to the following:

Mrs. Pat Weatherly
Mail Code 6EN-HM
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Your adherence to these procedures will ensure proper credit when payment is received.

SECTION IV
NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a)(2)(A) of TSCA, 15 U.S.c. § 2615(a)(2)(A), you (the Respondent) have the right to request a formal hearing within 30 days after the Complaint is served as described at 40 C.F.R. § 22.14(a)(6), if you want to contest any material fact set forth in this Complaint or the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice.

You must file a written Answer within 30 days after receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice (40 C.F.R. § 22.15(b)) to clearly and directly admit, deny, or explain each of the factual

allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegations in this Complaint will constitute an admission of the undenied allegation. The Answer shall also state the circumstances and argument, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. The Answer must be sent to:

Regional Hearing Clerk
Mail Code 6RC-D
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

In addition, please send a copy of the Answer and all other documents that you file in this action to Mrs. Pat Weatherly at the above address.

As indicated in 40 C.F.R. § 22.17, if you fail to file a written answer within 30 days of service of this Complaint, you may be deemed to have admitted all allegations made in this Complaint and waived your right to a hearing under TSCA. A Default Order may thereafter be issued by the Presiding Officer, and the civil penalty proposed herein shall become due and payable without further proceedings 60 days after a Final Default Order is issued. Upon issuance of the Final Default Order, the Respondent must immediately comply with the Order provisions in the Complaint.

Respondent is further informed that the 40 C.F.R. Part 22 prohibits any *ex parte* (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case after the Complaint is issued.

SECTION V
SETTLEMENT CONFERENCE

~~Whether or not you request a formal hearing, you may request an informal conference in~~
order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, contact Mrs. Weatherly at the above address or call at (214) 665-2165.

Please note that a request for an informal settlement conference does not extend the 30-day period during which you must submit a written answer and if you so desire, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Please be advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 C.F.R. § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference, nor requested a hearing within the 30-day time period, the above penalty may be assessed without further proceedings, in which case you will be notified that the penalty has become due and payable without further proceedings 60 days after a Final Order is issued upon default.

Date: 9-21-08



John Blevins

Director
Compliance Assurance and
Enforcement Division

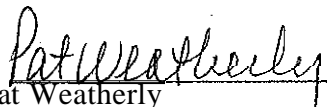
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Wells Fargo Bank Tower, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint along with EPA's "Section 1018-Disclosure Rule Enforcement Response Policy, dated December 2007, and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 1490000405820461

Ms. Lisa Barajas
Manager
Aberdeen Apartments
3400 Woodchase Drive
Houston, TX 77042-5500

Date: 9-30-08


Pat Weatherly