

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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REGION 5  
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<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2011-0004</b>
	)	
<b>Rose Real Estate Properties, Inc., Valdosta, Georgia,</b>	)	<b>Proceeding to Assess a Civil Penalty Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)</b>
<b>Respondent</b>	)	
<hr/>	)	

**MOTION FOR LEAVE TO WITHDRAW PORTIONS OF COMPLAINT  
AND FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Complainant, the United States Environmental Protection Agency, Region 5, pursuant to 40 C.F.R. § 22.14(c), hereby moves this Honorable Court for leave to withdraw portions of its Complaint in the above-captioned matter, and pursuant to 40 C.F.R. § 22.14(c) requests leave to file an Amended Complaint for the remaining counts. A draft redline/strikeout Amended Complaint is attached to this motion as Appendix A.

In support of its motion, Complainant states as follows:

1. On March 11, 2011, EPA filed the Complaint in this action against Respondent Rose Real Estate, Inc. (Respondent) for violations of Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and the Disclosure Rule, 40 C.F.R. § 745.113(b)(1)-(4) and (6), in two separate contracts for “target housing” located at 1420 Addington Road, Toledo, Ohio. (“Respondent’s Property”): (1) a June 1, 2007 lease; and (2) a June 7, 2009 lease.
2. On April 6, 2011, Respondent filed its Answer requesting a hearing on EPA’s allegations.
3. During Complainant’s preparation of Region 5’s case against Respondent, John Matson, Region 5’s attorney assigned to Respondent’s case, examined the evidence documenting Respondent’s violations. *See* Affidavit of John C. Matson, attached as Appendix B.

4. On October 20, 2009, Matson reviewed the June 1, 2007 lease for Respondent's Property ("the June 1, 2007 Lease"). *See* Appendix B.

5. On October 20, 2009, Matson determined that Region 5's copy of the June 1, 2007 Lease was complete and supported Region 5's allegations of Respondent's Disclosure Rule violations arising from the June 1, 2007 Lease. *See* Appendix B.

6. On June 10, 2011, Chief Judge Biro issued a prehearing order for the case establishing July 22, 2011 as the filing date for Complainant's prehearing exchange.

7. During the preparation of Complainant's prehearing exchange, Matson conducted a search of Region 5's legal files on Respondent. *See* Appendix B.

8. On July 7, 2011, Matson found an incomplete copy of the June 1, 2007 Lease in the legal files. *See* Appendix B.

9. On July 7, 2011, Christine Anderson, Region 5's enforcement officer assigned to Respondent's case, conducted a search of Respondent's file to locate the June 1, 2007 Lease. *See* Affidavit of Christine Anderson, attached as Appendix C.

10. On July 7, 2011, Anderson did not find the June 1, 2007 Lease, nor any portion thereof, in Region 5's file on Respondent. *See* Appendix C.

11. As of the filing date of this Motion, Region 5 has been unable to locate a complete copy of the June 1, 2007 Lease.

12. To ensure that the Complaint contains only Respondent's violations of the Disclosure Rule, 40 C.F.R. § 745.113(b)(1)-(4) and (6), that are supported by evidence, Complainant therefore seeks leave from this Honorable Court to withdraw portions of its Complaint arising from the June 1, 2007 Lease, and requests leave to file an Amended Complaint for the remaining counts.

13. Specifically, Complainant seeks to withdraw all references to the June 1, 2007 lease at 1420 Addington Road, Toledo, Ohio contained in the following paragraphs in the March 11, 2011 complaint: (i) Paragraph 25; (ii) Paragraph 26; (iii) Paragraph 27; (iv) Paragraph 34; (v) Paragraph 37; (vi) Paragraph 40; (vii) Paragraph 43; (viii) Paragraph 46; and (ix) Paragraph 48.


14. Complainant also seeks leave to file an Amended Complaint reflecting these changes, in addition to grammatical, numbering, and other changes made necessary by the withdrawn provisions. *See* Appendix A.

15. On July 19, 2011, Respondent stated that it did not have any objection to Complainant's Motion.

For the afore-mentioned reasons, Complainant respectfully requests that this Honorable Court grant its Motion for Leave to Withdraw Portions of the March 11, 2011 Complaint, and for Leave to File an Amended Complaint in this action.

Respectfully submitted,

Dated: July 21, 2011

  
\_\_\_\_\_  
John C. Matson  
Attorney for Complainant  
U.S. EPA Region 5

**In the Matter of Rose Real Estate Properties, Inc.**  
**Docket No.: TSCA-05-2011-0004**

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2011, a copy of Complainant's Motion for Leave to Withdraw Portions of the March 11, 2011 Complaint, and for Leave to File an Amended Complaint was filed by hand delivery with:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

I further certify that on that date, I arranged for a copy of same to be sent via certified mail, return receipt requested, to the Respondent by placement of it in the custody of the United States Postal Service, addressed as follows:

Rev. Floyd Rose  
Rose Real Estate, Inc.  
c/o Serenity Christian  
1619 North Lee Street  
Valdosta, Georgia 31602

I further certify that on that date, I arranged for a copy of same to be sent via pouch delivery to:

Chief Administrative Judge Susan L. Biro  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington D.C. 20460-2001

7-21-11  
Date

  
\_\_\_\_\_

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2011-0004</b>
	)	
<b>Rose Real Estate Properties, Inc.,</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Valdosta, Georgia,</b>	)	<b>Under Section 16(a) of the Toxic Substances</b>
	)	<b>Control Act, 15 U.S.C. § 2615(a)</b>
<b>Respondent</b>	)	
<hr/>		

**Amended 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. Respondent Rose Real Estate Properties, Inc. is a corporation doing business in the State of Ohio.

**Statutory and Regulatory Background**

4. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Lead-Based Paint Act), 42 U.S.C. § 4852d, required the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.
5. On March 6, 1996, 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).  
Field Code Changed
6. 40 C.F.R. § 745.102(a) required owners of more than four residential dwellings to comply with the Disclosure Rule by September 6, 1996.  
Field Code Changed

7. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except for: (1) 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 (2) 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. § 745.107 requires, among other things, that the lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

11. 40 C.F.R. Part § 745.113(b)(1) requires the lessor to include within each contract or as an attachment to each contract to lease target housing, a lead warning statement stating:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

12. 40 C.F.R. § 745.113(b)(2) requires the lessor to include either within each contract or as an attachment to each contract to lease target housing, 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.

13. 40 C.F.R. Part § 745.113(b)(3) requires a lessor to include within each contract or as an attachment to each 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 are available.

14. 40 C.F.R. § 745.113(b)(4) requires the lessor to include within each contract or as an attachment to each contract to lease target housing, 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 required under 15 U.S.C. § 2696.

15. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract, the signatures of the lessor, the agent, and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

16. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing 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).

17. 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, and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after 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**

18. Complainant incorporates paragraphs 1 through 17 of this Complaint as if set forth in this paragraph.

19. Between at least June 1, 2007 and June 7, 2009, Respondent owned a residential single-family dwelling in Toledo, Ohio, located at 1420 Addington Road (Respondent's Property).

20. Respondent's Property was constructed prior to 1978.

21. Respondent's Property is "target housing" as defined in 40 C.F.R. § 745.103.

22. On August 18, 2008, representatives of EPA conducted an inspection at 3356 Elm Street, Toledo, Ohio, the home and office of Billie S. Rose, the manager of several properties Respondent owns, to monitor compliance with the Lead-Based Paint Act and the Disclosure Rule.

23. On March 5, 2009, Complainant issued an administrative subpoena to Respondent under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all rental agreements and lead-based paint disclosure documentation for rental transactions at single-family dwellings owned by Respondent from the time period April 1, 2004 to March 5, 2009.

24. Respondent provided documents to Complainant during the inspection at its office, and in response to the TSCA administrative subpoena referenced in paragraph 23, including information identifying Respondent as the owner of more than four residential single-family dwellings in Toledo, Ohio, including the dwelling located at 1420 Addington Road.



25. On ~~June 7, 2009, the following dates~~ Respondent, either directly or through its authorized agent, entered into the ~~following two~~ written lease agreements (Contracts) with an individuals for the lease of Respondent's Property at 1420 Addington Road, Toledo, Ohio.

<del>1420 Addington Road, Toledo, OH</del>	<del>June 1, 2007</del>
<del>1420 Addington Road, Toledo, OH</del>	<del>June 7, 2009</del>

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26. ~~Each of t~~The two Contracts referenced in paragraph 25, above, covered a term of occupancy greater than 100 days.

27. ~~Between June 1, 2007 and~~On June 7, 2009, Respondent offered for lease its single-family dwelling, and an individuals entered into the Contracts to lease that dwelling ~~on the dates listed in paragraph 25, above.~~

28. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because it has offered for lease the target housing referenced in paragraph 25, above.

29. ~~Each~~The individual who signed a lease to pay rent in exchange for occupancy of the dwelling referenced in paragraph 25 above, became a "lessee," as defined in 40 C.F.R. § 745.103.

30. On June 21, 2010, EPA advised Respondent by letter that EPA was planning to file a civil administrative Complaint against Respondent for specific alleged violations of the Lead-Based Paint Act and the Disclosure Rule, and that the Complaint would seek a civil penalty of \$41,640. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the Complaint. If Respondent believed there were financial factors



Counts 3 through 42

36. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

~~37.~~ Respondent failed to include within the June 7, 2009 following Contracts for target housing, or as an attachment to ~~theeae~~ 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.:

- ~~Count 3:~~ June 1, 2007 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio; and
- ~~Count 4:~~ June 7, 2009 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio.

~~38.~~ ~~37.~~ \_\_\_\_\_

~~39.~~ ~~38.~~ Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

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Counts 5 through 63

~~40.~~ ~~39.~~ Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

~~41.~~ Respondent failed to include within the June 7, 2009 following Contracts for target housing, or as an attachment to ~~theeae~~ Contract, a list of any records or reports available to Respondent that Respondent 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.:

~~\* Count 5: June 1, 2007 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio; and~~

~~\* Count 6: June 7, 2009 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio.~~

40. —

42-41. Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(3), 42

U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 7 through 84**

43-42. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

44.—Respondent failed to include within the June 7, 2009 following Contracts for target housing, or as an attachment to ~~the each~~ Contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.;

~~\* Count 7: June 1, 2007 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio; and~~

~~\* Count 8: June 7, 2009 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio.~~

43. \_\_\_\_\_

45-44. Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(4),

42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

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**Counts 9 through 105**

~~46,45.~~ Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

~~47.~~ Respondent failed to include within the June 7, 2009 following Contracts for target housing, or as an attachment to ~~the each~~ Contract, the signatures of the lessor, and the lessee certifying to the accuracy of their statements and the dates of such signatures.:

~~\* Count 9: June 1, 2007 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio; and~~

~~\* Count 10: June 7, 2009 lease for 1420 Addington Road,  
\_\_\_\_\_ Toledo, Ohio.~~

~~46.~~ \_\_\_\_\_

~~48.~~ Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

~~47.~~ \_\_\_\_\_

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**Proposed Civil Penalty**

~~49,48.~~ Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint as follows:

**Counts 1 through 2**

<del>42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)</del>	<del>\$10,320</del>
<del>42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)</del>	<del>\$2,325</del>

**Count 3 through 42**

<del>42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2)</del>	<del>\$7,740</del>
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2)	\$1,155

**Count 5 through 63**

<del>42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3)</del>	<del>\$2,580</del>
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3)	\$390

**Counts 7 through 84**

<del>42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4)</del>	<del>\$5,160</del>
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4)	\$780

**Count 9 through 105**

<del>42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6)</del>	<del>\$1,290</del>
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6)	\$200

<b>Total Proposed Civil Penalty</b>	<b><u>\$31,940,850</u></b>
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50.49. In determining the amount of any 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.

51.50. 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 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.

~~52-51.~~ As stated in paragraph 30, above, by letter dated June 21, 2010, EPA advised Respondent that EPA was planning to file a civil administrative Complaint against Respondent for alleged violations of the Lead-Based Paint Act, and the Lead-Based Paint Act authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the Complaint, and if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

~~53-52.~~ Respondent has not provided facts or information sufficient to indicate that the penalty should be adjusted for financial or other factors related to the alleged violation.

#### **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**

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends 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

Respondent 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 Associate Regional Counsel John Matson to receive any Answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Matson at (312) 886-2243. His address is:

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

**Penalty Payment**

Respondent 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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to John Matson and to:

Christine Anderson (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 Respondent contests any material fact upon which the Complaint is based, or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent 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, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

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

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does 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 Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent 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 Respondent requests a hearing, Respondent 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, Respondent may contact John Matson at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent 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**

Respondent's payment of the civil penalty will not satisfy Respondent's 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 Respondent 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.

\_\_\_\_\_  
Date  
Bruce F. Sypniewski

\_\_\_\_\_  
Margaret M. Guerriero  
Acting Director  
Land and Chemicals Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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<b>Rose Real Estate Properties, Inc.,</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Valdosta, Georgia,</b>	)	<b>Under Section 16(a) of the Toxic Substances</b>
	)	<b>Control Act, 15 U.S.C. § 2615(a)</b>
<b>Respondent</b>	)	
<hr/>		

**DECLARATION OF JOHN C. MATSON**

I, John C. Matson, under penalty of perjury, declare in accordance with 28 U.S.C. § 1746:

1. I am currently employed as an Associate Regional Counsel in the Office of Regional Counsel (ORC) for the United States Environmental Protection Agency, Region 5. I have been employed in this position since 2000.

2. Among my duties, I serve as an attorney responsible for representing EPA in judicial and administrative matters against violators of the provisions of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Lead-Based Paint Act), 42 U.S.C. § 4852d. As such, I am responsible for knowing the requirements of, and pursuing administrative actions for violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Lead-Based Paint Act), 42 U.S.C. § 4852d, and the implementing federal regulations that provide the standards for 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). This includes the federal regulations at issue in this matter.

3. As part of my official duties, I review and determine the sufficiency of Region 5's evidence of violations of EPA's statutes and regulations, including TSCA and the Disclosure Rule.

4. As part of my official duties, I maintain the Region 5 ORC case file for all matters assigned to me.

5. Since August of 2009, I have been assigned the matter of Rose Real Estate Properties, Inc. (Rose).

6. I received the legal case file in August of 2009 when I was assigned the responsibility to determine Rose's compliance with the Disclosure Rule.

7. I have maintained the ORC case file for Rose since August 2009, adding documents when I received them.

8. On October 20, 2009, I attending a meeting in the work space of Christine Anderson, the technical assignee to Region 5's case against Rose. Anderson and I met to review all of the documents in Region 5's files, to discuss the violations, and to ensure that Rose had turned over to Region 5 complete copies of all of its leases.

9. On October 20, 2009, I examined all of the leases contained in Anderson's file for Rose.

10. On October 20, 2009, I examined the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio, and determined that Region 5 had a complete copy of the lease.

11. On October 20, 2009, I determined that the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio did not contain the following information:

- a lead warning statement stating:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention;

- 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;
- 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 are available.
- 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 required under 15 U.S.C. § 2696; and
- the signatures of the lessor, the agent, and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

12. On October 27, 2009, Region 5 sent a letter to Rose requesting copies of all missing or partial leases for its properties.

13. The October 27, 2009 letter did not request that Rose send Region 5 a complete copy of the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio.

14. The October 27, 2009 letter did not request that Rose send Region 5 any missing pages of the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio.

15. Since October 27, 2009, Region 5 has sent Rose several requests to provide copies of leases for properties it owns.

16. From October 27, 2009 to July 7, 2011, Region 5 did not request that Rose send Region 5 a complete copy of the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio.

17. From October 27, 2009 to July 7, 2011, Region 5 did not request that Rose send Region 5 any missing pages of the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio.

18. On March 11, 2011, EPA filed a Complaint in this action against Rose for violations of Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and 40 C.F.R. § 745.113(b)(1), 745.113(b)(2), 745.113(b)(3), 745.113(b)(4), and 745.113(b)(6), in two contracts to lease target housing at 1420 Addington Road, Toledo, Ohio: (1) a June 1, 2007 lease; and (2) June 7, 2009 lease.

19. On July 7, 2011, I examined the case file to locate the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio.

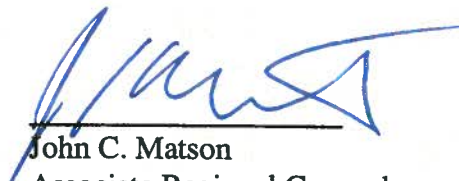
20. On July 7, 2011, the case file did not contain a complete copy of the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio, but only contained the cover page, a county sales transfer inquiry for the property, and a completed lease application filled out by the tenant.

21. I have subsequently re-examined my file for this case and my work space, and cannot locate a complete copy of the June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio.

22. My statements in this declaration are based upon my personal knowledge of the facts in this matter.

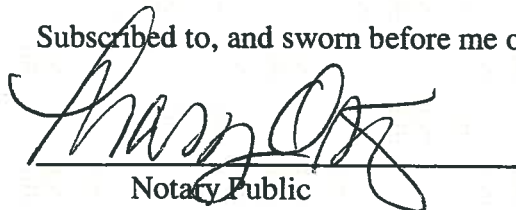
Executed on July 19, 2011

By:

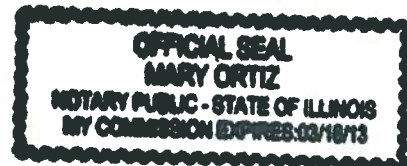


John C. Matson  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region 5

Subscribed to, and sworn before me on JULY 19, 2011



Notary Public



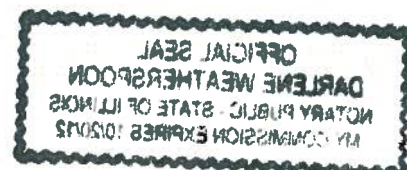
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2011-0004</b>
	)	
<b>Rose Real Estate Properties, Inc.,</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Valdosta, Georgia,</b>	)	<b>Under Section 16(a) of the Toxic Substances</b>
	)	<b>Control Act, 15 U.S.C. § 2615(a)</b>
<b>Respondent</b>	)	
<hr/>		

**DECLARATION OF CHRISTINE ANDERSON**

I, Christine Anderson, under penalty of perjury, declare in accordance with 28 U.S.C. § 1746:

1. I am currently employed as an Enforcement Officer in the Land and Chemicals Division, United States Environmental Protection Agency, Region 5. I have been employed in this position since 2008.
2. I serve as an enforcement officer in the Pesticides and Toxics Compliance Section of the Chemicals Management Branch. Among my responsibilities generally is examining documents obtained from inspections of companies leasing residential single-family dwellings; identifying instances of noncompliance with the provisions of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Lead-Based Paint Act), 42 U.S.C. § 4852d. I am specifically responsible for knowing the requirements of, and ensuring compliance with, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Lead-Based Paint Act), 42 U.S.C. § 4852d, and the implementing federal regulations that provide the standards for 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). This includes the federal regulations at issue in this matter.
3. Among the programs the Land and Chemicals Division implements are those under TSCA and the Disclosure Rule.
4. Among my enforcement duties, I serve as an enforcement officer responsible for technical development of actions for Disclosure Rule violations, and assuring compliance with the Disclosure Rule. As appropriate, I develop enforcement actions pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and provide necessary technical support to facilitate enforcement actions that may follow.



5. On March 11, 2011, U.S. EPA filed a Complaint in this action against Rose Real Estate Properties, Inc. (Rose) for violations of Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and 40 C.F.R. § 745.113(b)(1), 745.113(b)(2), 745.113(b)(3), 745.113(b)(4), and 745.113(b)(6), in two contracts to lease target housing at 1420 Addington Road, Toledo, Ohio: (1) a June 1, 2007 lease; and (2) June 7, 2009 lease.

6. Before filing the Complaint, documents were transferred between the Region 5 Pesticides and Toxics Compliance Section, the regional copy room and the Office of Regional Counsel.

7. During the transfer of documents, the June 1, 2007 contract to lease target housing at 1420 Addington Road, Toledo, Ohio, was lost.

8. On July 7, 2011, I reviewed my case file and workspace thoroughly, and could not locate the contract to lease target housing at 1420 Addington Road, Toledo, Ohio for the June 1, 2007 lease.

9. On July 14, 2011, I met with John Matson, the Region 5 lawyer assigned to this case. Matson has reviewed his case file and office space thoroughly, and he does not have a complete copy of the June 1, 2007 contract to lease target housing at 1420 Addington Road, Toledo, Ohio.

10. I cannot produce the contract to lease target housing at 1420 Addington Road, Toledo, Ohio for the June 1, 2007 lease.

11. My statements in this declaration are based upon my personal knowledge of the facts in this matter.

Executed on July 19, 2011

By:



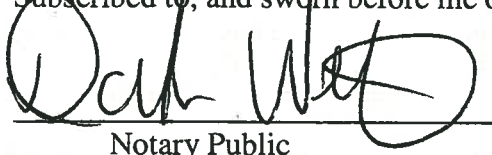
Christine Anderson

Enforcement Officer

United States Environmental Protection Agency

Region 5

Subscribed to, and sworn before me on July 19, 2011



Notary Public

