



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 31 2008

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 8731

10 South Mason, LLC
Registered Agent: Barry A. Ash
77 West Washington, Suite 1211
Chicago, Illinois 60602

Re: In the Matter of 10 South Mason, LLC, Docket No.

TSCA-05-2008-0020
[Handwritten signature]

Dear Sir:

I have enclosed a complaint filed by the United States Environmental Protection Agency (U.S. EPA), Region 5 against 10 South Mason, LLC (you), 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-13J), 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. If you wish to request a conference, or if you have any questions about this matter, please contact me or Richard R. Wagner, Senior Attorney, Assistant Regional Counsel, at (312) 886-7947.

Sincerely,

Margaret M. Guerriero

Director

Land and Chemicals Division

Enclosures

cc: Robert A. Egan, P.C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
10 South Mason, LLC)
Chicago, Illinois)
)
Respondent)
_____)

Docket No. TSCA-05-2008-0020)
)
)

ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY
FOR HEARING

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ADMINISTRATIVE COMPLAINT

1. This Administrative Complaint is notice of a proposed penalty order, issued under the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 16 (a) of the Toxic Substances Control Act 15 United States Code § 2615(a) (TSCA).
2. By lawful delegation, the Director of the Land and Chemicals Division, U.S. EPA, Region 5, is authorized to issue this Complaint on behalf of the Administrator.
3. Respondent is 10 South Mason, LLC, of Chicago.

Statutory and Regulatory Background

4. That Public Law 102-550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), in part, manifests an effort by Congress to provide a workable framework for lead-based paint evaluation and reduction, and an effort to educate the public concerning the hazards and sources of lead based paint poisoning and steps to reduce and eliminate such hazards. Section 1003 of the Act, 42 U.S.C. § 4851a.

5. That Section 1018(a) of the Act, 42 U.S.C. 4852d(a), provides that not later than two years after October 28, 1992, the Secretary of Housing and Urban Development (Secretary) and the U.S. EPA Administrator shall promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

6. That on March 6, 1996, pursuant to Section 1018(a) of the Act, 42 U.S.C. 4852d, the Secretary and the Administrator promulgated regulations identified as “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property” (Disclosure Rule). 61 Fed. Reg. 9064 (March 6, 1996). Since July 1, 1996, the Disclosure Rule has been codified at 40 C.F.R. Part 745, Subpart F.

7. That under the Disclosure Rule, “target housing” means “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 for the elderly or persons with disabilities) or any 0-bedroom dwelling.” 40 C.F.R. § 745.103.

8. That under the Disclosure Rule, “lead-based paint” means “paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.” 40 C.F.R. § 745.103.

9. That under the Disclosure Rule, “lead-based paint hazard” means “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.” 40 C.F.R. § 745.103.

10. That under the Disclosure Rule, “lessor” means “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.” 40 C.F.R. § 745.103.

11. That under the Disclosure Rule, “lessee” means “any entity that enters into an agreement to lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.” 40 C.F.R. § 745.103.

12. That under the Disclosure Rule, “owner” means “any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribe and nonprofit organizations.” 40 C.F.R. § 745.103.

13. That under the Disclosure Rule, requirements of the rule were effective for owners of one to four residential dwellings on December 6, 1996. 40 C.F.R. § 745.102(a).

14. That Section 1018d(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), provides, in part, that it shall be a prohibited act under Section 409 of the Toxic Substances Control Act [15 U.S.C. § 2689] (TSCA) for any person to fail or refuse to comply with a provision of any rule issued under Section 1018(a) of the Act, 42 U.S.C. § 4852d(a), and that the penalty for each such violation shall not be more than \$10,000.

15. That Section 16(a) of TSCA provides, in part, that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty, and provides for the Administrator to assess such a penalty after notice to the alleged violator, and an

opportunity for the alleged violator to request a hearing, and for the Administrator's determination of the appropriate amount of civil penalty.

General Allegations

14. That at all times relevant to this Complaint, Respondent owned residential rental property at 10 South Mason, in Chicago, Illinois ("the Property").

15. That the Property was constructed prior to 1978.

16. That the Property is "target housing," as defined in 40 C.F.R. § 745.103.

17. That on March 15, 2004, Respondent, either directly or through an authorized agent, entered into a written lease agreement with an individual for the lease and possession of Unit 111 at the Property ("the lease").

18. That the lease, identified in paragraph 17, was for a period of occupancy of greater than 100-days.

19. That children under the age of six resided at the Property during the term of the lease identified in paragraph 17.

20. That as a result of its entering into the lease identified in paragraph 17, the Respondent was a "lessor" as defined in 40 C.F.R. § 745.103.

21. That as a result of the lease identified in paragraph 17, the individual entering into the lease, and taking possession of Unit 111 at the Property, became a "lessee" as defined in 40 C.F.R. § 745.103.

Count I

22. That paragraphs 1 through 21 are incorporated herein by reference.

23. That 40 C.F.R. § 745.113(b)(1) provides that “[e]ach contract to lease target housing shall include, as an attachment or within the contract,” a “Lead Warning Statement,” containing the language set out at 40 C.F.R. § 745.113(b)(1).

24. That Respondent failed to include a Lead Warning Statement as an attachment to, or within, the lease identified in paragraph 17.

25. That Respondent’s failure to provide a Lead Warning Statement, as set forth in paragraph 24, is a violation of 40 C.F.R. § 745.113(b)(1), and, consequently, a violation of Section 409 of TSCA, 15 U.S.C. § 2689, causing Respondent to be liable for a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count II

26. That paragraphs 1 through 25 are incorporated herein by reference.

27. That 40 C.F.R. § 745.113(b)(2) provides that each contract to lease target housing shall include, as an attachment or within the contract, “[a] statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.”

28. That Respondent failed to include a statement disclosing the presence of lead-based paint and/or lead-based paint hazards in the residential property it was leasing, or indicating that it had no knowledge of the presence of lead-based paint and/or lead-based paint hazards in that property, as an attachment to, or within, the lease identified in paragraph 17.

29. That Respondent’s failure to include a statement disclosing its knowledge or lack of knowledge regarding lead-based paint and its hazards in the residential property it was leasing, as

set forth in paragraph 28, is a violation of 40 C.F.R. § 745.113(b)(2), and, consequently, a violation of Section 409 of TSCA, 15 U.S.C. § 2689, causing Respondent to be liable for a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count III

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. That 40 C.F.R. § 745.113(b)(3) provides that each contract to lease target housing shall include, as an attachment or within the contract, “[a] list of any records or reports available to the lessor pertaining to lead-based paint hazards in the housing that have been provided to the lessee,” or, “[i]f no such records or reports are available, the lessor shall so indicate.”

32. That Respondent failed to include a list of any records or reports it had available, and provided to the lessee, pertaining to lead-based paint hazards in the residential property identified in the lease, or a statement that it had no such records, as an attachment to, or within, the lease identified in paragraph 17.

33. That Respondent’s failure to include a list of available records or reports pertaining to lead-based paint hazards which it provided the lessee, or, in the alternative, to indicate that no such records or reports were available, as set forth in paragraph 32, is a violation of 40 C.F.R. § 745.113(b)(3), and, consequently, a violation of Section 409 of TSCA, 15 U.S.C. § 2689, causing Respondent to be liable for a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count IV

34. Paragraphs 1 through 33 are incorporated herein by reference.

35. That 40 C.F.R. § 745.113(b)(4) provides that each contract to lease target housing shall include, as an attachment or within the contract, “[a] statement by the lessee affirming receipt of the information set out in paragraph (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.”

36. That Respondent failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), either as an attachment to, or within, the lease identified in paragraph 17.

37. That Respondent’s failure to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), as set forth in paragraph 36, is a violation of 40 C.F.R. § 745.113(b)(4), and, consequently, a violation of Section 409 of TSCA, 15 U.S.C. § 2689, causing Respondent to be liable for a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Count V

38. Paragraphs 1 through 37 are incorporated herein by reference.

39. That 40 C.F.R. § 745.113(b)(6) provides that each contract to lease target housing shall include, as an attachment or within the contract, “[t]he signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.”

40. That Respondent failed to include the signatures of the lessors, agents and lessees, certifying to the accuracy of their statements relating to the requirements of 40 C.F.R. § 745.113, to the best of their knowledge, along with the dates of signature, as an attachment to, or within, the lease identified in paragraph 17.

41. That Respondent's failure to include as an attachment to, or within, the lease identified in paragraph 40 the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, is a violation of 40 C.F.R. § 745.113(b)(6), and, consequently, a violation of Section 409 of TSCA, 15 U.S.C. § 2689, causing Respondent to be liable for a civil penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

Proposed Civil Penalty

In Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Congress invests in the Administrator authority to assess a civil penalty for violations of Section 409 of TSCA, 15 U.S.C. § 2689. By Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), Congress makes a violation of any rule or order issued under Section 1018 of the Act, 42 U.S.C. § 4852d, a violation of Section 409 of TSCA, 15 U.S.C. § 2689, setting the penalty amount for each violation at not more than \$10,000. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated thereunder, the Administrator may assess a civil penalty of up to \$11,000 per day for each such violation of TSCA occurring after January 31, 1997. See 40 C.F.R. Part 19 (July 1, 2007).

Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), provides that, "in determining the amount of a civil penalty, the Administrator shall 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."

In determining the penalty amount proposed in this Administrative Complaint, the Administrator's Delegated Complainant analyzed the known evidence in this case, in consideration of the penalty criteria identified at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), as interpreted in the Administrator's "Section 1018 - Disclosure Rule Enforcement Response Policy," dated February 2000 ("the Policy"). The Administrator's policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases. The Administrator's Delegated Complainant so calculated and intended to propose for the violations of Respondent alleged in this Complaint a penalty, as follows:

Count 1 (40 C.F.R. § 745.113(b)(1))	\$10,316.00
Count 2 (40 C.F.R. § 745.113(b)(2))	\$ 7,737.00
Count 3 (40 C.F.R. § 745.113(b)(3))	\$ 2,579.00
Count 4 (40 C.F.R. § 745.113(b)(4))	\$ 5,158.00
Count 5 (40 C.F.R. § 745.113(b)(6))	\$ 1,290.00
	\$27,080.00
Proposed Gravity-Based Civil Penalty:	\$27,080.00

Consistent with the Administrator's published decisions, see *In Re New Waterbury, Ltd.*, 5 E.A.D. 529, 1994), Complainant presumed that Respondent had an ability to pay that amount of penalty. However, in the course of pre-filing communications with the Administrator's enforcement staff, Respondent raised as an issue its "ability to pay" a penalty, and submitted records relevant to its financial status. TSCA and the Policy require that in determining an appropriate amount of penalty for TSCA Section 1018 violations, the Administrator's officers

and staff must consider a Respondent's "ability to pay" a penalty. Upon review of Respondent's Company's financial records by a financial analyst retained by the Administrator for purposes of addressing "ability to pay" claims, the Administrator's Delegated Complainant has concluded that Respondent is able to pay no more than \$2,500 for its violations alleged in the Complaint.

Consequently, **the Administrator's Delegated Complainant proposed that a civil penalty in the amount of \$2,500 be assessed for the violations of Respondent alleged in the Complaint.**

Payment of the Proposed Civil Penalty

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

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197

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:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Richard R. Wagner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Congress has provided that, before issuing an order assessing a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, the Administrator shall give written notice to the alleged violator of the proposal to issue such an order, and of the alleged violator's opportunity to request a hearing prior to any such order being issued, Section 16(a)(1)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(1)(2)(A), an obligation he fulfills by issuing this Administrative Complaint. Consequently, you have the right to request a hearing to challenge the facts alleged in the Administrative Complaint and the amount of civil penalty proposed to be assessed by the Administrator.

Any hearing and pre-hearing issues that may occur will be governed in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2007) ("the Administrator's Rules"). A copy of the Administrator's Rules accompanies this Complaint.

If you wish to avoid being found in default, you must file a written answer to the Complaint with the Regional Hearing Clerk (address above), within thirty (30) days of your receipt service of this Complaint. 40 C.F.R. § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday,

the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. 40 C.F.R. § 22.7(a).

By rule, 40 C.F.R. § 22.15(b), the Administrator provides that your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Administrative Complaint with respect to which you have any knowledge, or, where you have no knowledge of a particular factual allegation, so state. In 40 C.F.R. § 22.15(b), the Administrator provides that your Answer also must state:

- 1. The circumstances or arguments that you allege constitute the grounds of defense;**
- 2. The facts that you dispute;**
- 3. The basis on which you dispute the proposed relief, that being the amount of penalty proposed; and**
- 4. Whether you request a hearing.**

Your failure to admit, deny or explain any material factual allegation in the Complaint will constitute an admission of the allegation. See 40 C.F.R. § 22.15(d).

You should further note that the Administrator provides that any hearing that shall be held will be a “hearing upon the issues raised by the complaint and answer.” See 40 C.F.R. § 22.15(c). Consequently, your failure to raise an issue in your answer may preclude you from addressing the issue at any hearing which may be held.

A copy of the Answer, and any subsequent documents filed by you in this action, should be sent to Richard R. Wagner, Senior Attorney, (address above). Mr. Wagner’s telephone number is (312) 886-7947.

Notwithstanding any request you may make for a hearing, if you fail to file an answer within thirty (30) days of your receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. 40 C.F.R. § 22.15(a); 40 C.F.R. § 22.17. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of your right to a hearing on those factual allegations. Any civil penalty determined appropriate in the Default Order shall then become due and payable, without further proceedings, on becoming a final order under 40 C.F.R. § 22.27(c). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15.00 after thirty (30) days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

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 should contact Mr. Wagner, at the address or phone number specified above.

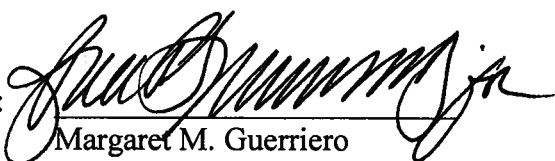
Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue

simultaneously the informal settlement conference and the adjudicatory hearing process.

U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

CONTINUING OBLIGATION TO COMPLY:

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

By: 
Margaret M. Guerriero
Director
Land and Chemicals Division

Dated: 7/31/08

TSCA-05-2008-0020




CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Administrative Complaint involving property 10 South Mason, LLC, was filed on August 4, 2008, with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A true correct copy was sent by Certified Mail, Receipt No.7001 0320 0005 8931 8731, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

10 South Mason, LLC
Registered Agent: Barry A. Ash
77 West Washington, Suite 1211
Chicago, Illinois 60602

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Richard R. Wagner, 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.

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