

RAUP, WILEY & MOTT

Attorneys At Law

829 West Fourth Street
Williamsport, PA 17701

THOMAS C. RAUP
J. MICHAEL WILEY
JOHN C. MOTT

July 25, 2008

Tel: (570) 321-0709
Fax: (570) 321-1719

VIA EXPRESS MAIL

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: In the Matter of Mountainside Realty, et al.
Docket No. TSCA-03-2008-0333

Dear Regional Hearing Clerk:

Enclosed please find the original and two (2) copies of Respondents' Answer to Administrative Complaint including a request for a hearing in the above-referenced matter. Kindly return a file-stamped copy of same to our attention in the self-addressed stamped envelope provided herein.

Thank you for your kind attention to this matter and please do not hesitate to contact me directly with any questions regarding the contents of this letter or this matter in general.

Very truly yours,

RAUP, WILEY & MOTT


J. Michael Wiley, Esquire

JMW/jw

Enclosures

cc: Louis F. Ramalho, Senior Assistant Regional Counsel



The Henry C. Parsons House

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

MOUNTAINSIDE REALTY,
A Pennsylvania General Partnership

KEVIN WEINHOFFER and
MARSHALL R. CORBIN, General Partners

Respondents,

2713 Grand Street
South Williamsport, Pennsylvania

375 Main Street, Apartment No. 2
South Williamsport, Pennsylvania

438 Market Street, First Floor
South Williamsport, Pennsylvania

110 Valley Street
Duboisstown, Pennsylvania

2669 Riverside Drive
South Williamsport, Pennsylvania

212 West Southern Avenue
South Williamsport, Pennsylvania

507½ West Southern Avenue
South Williamsport, Pennsylvania

505 West Southern Avenue
South Williamsport, Pennsylvania

815 West Southern Avenue
South Williamsport, Pennsylvania

Target Housing

Docket No. TSCA-03-2008-0333

RESPONDENTS' ANSWER TO ADMINISTRATIVE COMPLAINT AND NOTICE OF
OPPORTUNITY FOR A HEARING ISSUED PURSUANT TO SECTION 16(a) OF THE
TOXIC SUBSTANCES CONTROL ACT ("TSCA"), 15 U.S.C. § 2615(a)

AND NOW come the above-captioned Respondents, Mountainside Realty, Kevin Weinoffer, and Marshall R. Corbin, by and through J. Michael Wiley, Esquire, of Raup, Wiley & Mott, their attorneys, to request a hearing in the above-captioned matter and provide the following Answer to the Administrative Complaint:

Respondents specifically deny any and all factually allegations set forth by the United States Environmental Protection Agency ("EPA") in its preamble to the Administrative Complaint and the allegations of violations of the enumerated statutes which constitute legal conclusions to which no response is required and demand strict proof thereof at the hearing in this matter.

I. JURISDICTION

1. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

II. DEFINITIONS AND REGULATORY REQUIREMENTS

2. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

3. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

4. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

5. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

6. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

7. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

8. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

9. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

10. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

11. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

12. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

13. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

14. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required.

III. ANSWER TO ALLEGED FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. It is admitted that Mountainside Realty is a Pennsylvania general partnership with Kevin Weinoffer and Marshall R. Corbin as its general partners. By way of further answer, all alleged residential lease transactions as well as the ownership of the properties at issue were through Mountainside Realty and it is specifically denied that either Kevin Weinoffer or Marshall R. Corbin have any individual liability in this matter. By way of further answer, at all

times relevant hereto, Mountainside Realty is a duly authorized and licensed fictitious recognized and existing under the laws of the Commonwealth of Pennsylvania.

16. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required. By way of further answer, to the extent that EPA is asserting that Kevin Weinoffer and Marshall R. Corbin were “owners” or “lessors” under the provisions of 40 C.F.R. § 745.103 of the properties at issue outside of the Pennsylvania general partnership and registered fictitious name Mountainside Realty same is specifically denied and strict proof thereof is demanded.

17. It is admitted that Mountainside Realty, a Pennsylvania general partnership and registered fictitious name owns or previously owned the nine (9) properties identified in this Paragraph.

18. Admitted.

19. Admitted.

20. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

21. The averments of this Paragraph constitute a legal conclusion and/or restatement of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

A. 2713 Grand Street (Alleged Lease Transaction No.1)

22. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

23. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

24. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

25. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

B. 375 Main Street, Apartment No. 2 (Alleged Lease Transaction No. 2)

26. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

27. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

28. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

C. 438 Market Street, 1st Floor (Alleged Lease Transaction No. 3)

29. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

30. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

31. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

D. 110 Valley Street (Alleged Lease Transaction No. 4)

32. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

33. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

34. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

E. 2669 Riverside Drive (Alleged Lease Transaction No. 5)

35. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

36. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

37. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

F. 212 West Southern Avenue (Alleged Lease Transaction No. 6)

38. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

39. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

40. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

G. 507½ West Southern Avenue (Alleged Lease Transaction No. 7)

41. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

42. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

43. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

H. 505 West Southern Avenue (Alleged Lease Transaction No. 8)

44. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

45. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

46. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

I. 815 West Southern Avenue (Alleged Lease Transaction No. 9)

47. The averments of this Paragraph are specifically denied and strict proof thereof is demanded at hearing. In addition, the averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

48. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

49. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required.

IV. ANSWER TO ALLEGED VIOLATIONS

Counts 1-9

(Alleged Violations of 40 C.F.R. §§ 745.113(b)(1) Regarding Alleged Lease Transactions No. 1 Through No. 9)

50. Respondents' Answer to the Administrative Complaint contained in Paragraph 1 through 49 are incorporated by reference herein as though fully set forth at length.

51. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

52. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

53. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

Counts 10-18

(Alleged Violations of 40 C.F.R. §§ 745.113(b)(2) Regarding Alleged Lease Transactions No. 1 Through No. 9)

54. Respondents' Answer to the Administrative Complaint contained in Paragraph 1 through 53 are incorporated by reference herein as though fully set forth at length.

55. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

56. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

Counts 19-27
(Alleged Violations of 40 C.F.R. §§ 745.113(b)(4) Regarding Alleged Lease Transactions
No. 1 Through No. 9)

57. Respondents' Answer to the Administrative Complaint contained in Paragraph 1 through 56 are incorporated by reference herein as though fully set forth at length.

58. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

59. The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. To the extent that this Paragraph is deemed to contain averments of facts, same are specifically denied and strict proof thereof is demanded.

V. RESPONSE TO PROPOSED CIVIL PENALTY

The averments of this Paragraph contain legal conclusions and/or restatements of the law to which no response is required. By way of further answer, EPA's proposed penalty and its method of calculation fails to properly take into consideration and balance the very factors it sets forth in its restatement of controlling authority. Therefore, while the allegations set forth in the Administrative Complaint are specifically denied and strict proof thereof has been demanded, it

is respectfully submitted that EPA's methodology and proposed penalty is in error and constitutes an abuse of its discretion under the circumstances and is not appropriate.

VI. STATUTORY AND REGULATORY AND AFFIRMATIVE DEFENSES.

60. Respondents' Answer to the Administrative Complaint contained in Paragraph 1 through 59 are incorporated by reference herein as though fully set forth at length.

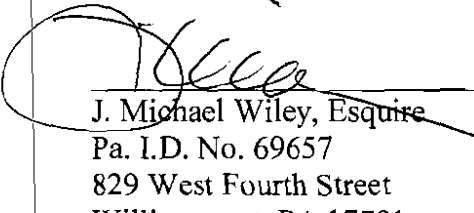
67. Respondents hereby assert its statutory and regulatory defenses to the alleged violations set forth herein.

VII. REQUEST FOR A HEARING

Respondents hereby request a hearing in this matter.

Respectfully submitted,

RAUP, WILEY & MOTT



J. Michael Wiley, Esquire
Pa. I.D. No. 69657
829 West Fourth Street
Williamsport, PA 17701
(570) 321-0709
(570) 321-1719 (Fax)
jmwiley@raupwileylaw.com

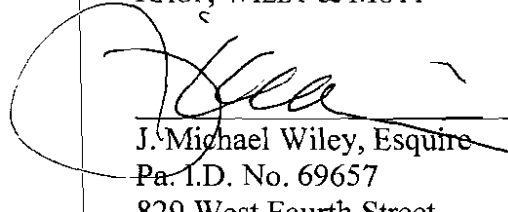
CERTIFICATE OF SERVICE

AND NOW this 25th day of July, 2008, the undersigned hereby certifies that a true and correct copy of RESPONDENTS' ANSWER TO ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING ISSUED PURSUANT TO SECTION 16(a) OF THE TOXIC SUBSTANCES CONTROL ACT ("TSCA"), 15 U.S.C. § 2615(a) was served upon:

Louis F. Ramalho
Senior Assistant Regional Counsel
Office of Regional Counsel (3RRC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respectfully submitted,

RAUP, WILEY & MOTT



J. Michael Wiley, Esquire
Pa. I.D. No. 69657
829 West Fourth Street
Williamsport, PA 17701
(570) 321-0709
(570) 321-1719 (Fax)
jmwiley@raupwileylaw.com