

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 8

4 Docket No. TSCA-08-2007-0012

5
6 In the Matter of:)
7)
8 Waclaw J. Jarosz and Janina Jarosz,) **PENALTY COMPLAINT AND NOTICE OF**
9) **OPPORTUNITY FOR HEARING**
10 Respondents.)

11 **INTRODUCTION (JURISDICTION)**

12
13
14 1. This civil administrative enforcement action is authorized by Congress in the
15 Residential Lead-Based Paint Hazard Reduction Act ("Residential Lead Hazard Act") and the
16 Toxic Substances Control Act ("TSCA"). 42 U.S.C. § 4851 et seq., and 15 U.S.C. § 2601 et seq.
17 EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the
18 Code of Federal Regulations and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the
19 regulations constitute violations of section 16 of TSCA. The rules for this proceeding are the
20 "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,
21 Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or
22 Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

23
24 2. The undersigned EPA officials have been properly delegated the authority to issue
25 this action.

26
27 3. EPA alleges that Respondents failed to comply with federal regulations regarding
28 the disclosure of lead-based paint hazards, found at 40 C.F.R. part 745, subpart F and, therefore,
29 are in violation of the Residential Lead Hazard Act and TSCA. As a result, EPA proposes the
30 assessment of a civil penalty, as more fully explained below. 42 U.S.C. § 4852d(b)(5), 15 U.S.C.
31 § 2689.

32 **NOTICE OF OPPORTUNITY FOR A HEARING**

33
34
35 4. Respondents have the right to a public hearing before an administrative law judge
36 (ALJ) to contest (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the
37 proposed penalty, or both.

38
39 5. To disagree with the Complaint and assert your right to a hearing, Respondents
40 must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop
41 Street, Denver, CO 80202-1129) not more than 30 days after receiving this Complaint and
42 provide a copy to the enforcement attorney listed below. The answer must clearly admit, deny or
43 explain the factual allegations of the Complaint, the grounds for any defense, the facts you may
44 dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of

1 Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN**
2 **ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE**
3 **RESPONDENTS' RIGHT TO DISAGREE WITH THE ALLEGATIONS OR**
4 **PROPOSED PENALTY AND RESULT IN A DEFAULT JUDGMENT AND**
5 **ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**
6

7 QUICK RESOLUTION

8
9 6. Respondents may resolve this proceeding at any time by paying the specific
10 penalty proposed in the Complaint. Such payment need not contain any response to, or
11 admission of, the allegations in the Complaint. Such payment constitutes a waiver of
12 Respondents' right to contest the allegations and to appeal the final order. See section 22.18 of
13 the *Rules of Practice* for a full explanation of the quick resolution process, including how
14 extensions of time to pay can be obtained.
15

16 SETTLEMENT NEGOTIATIONS

17
18 7. EPA encourages settlement discussions through informal settlement conferences.
19 If you want to pursue the possibility of settling this matter, or have any other questions, contact
20 Eduardo Quintana, Senior Enforcement Attorney, at 303-312-6924 or 1-800-227-8917; extension
21 312-6924 or at the address below. **Please note that contacting the attorney or requesting a**
22 **settlement conference does NOT delay the running of the 30 day period for either paying**
23 **the penalty or filing an answer and requesting a hearing.**
24

25 ALLEGATIONS

26
27 8. Respondents are Waclaw J. Jarosz and Janina Jarosz. ("Respondents").
28

29 9. EPA regulations require, among other things, that an owner of housing
30 constructed before 1978 shall, prior to obligating a lessee under a contract to lease or rent the
31 housing, provide or include in or attach to the leasing contract, (1) an EPA-approved lead hazard
32 information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of
33 any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such
34 presence), (4) a list of any records or reports available to the owner related to lead-based paint or
35 hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she
36 received the above information, and (6) signatures (dated) by both parties certifying the accuracy
37 of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).
38

39 10. Respondents are, and at all times relevant to this Complaint have been, the
40 owners, as that term is defined in 40 C.F.R. § 745.103, of the Mt. Vernon Manor Apartments
41 property located at 1411 Fenton St., Lakewood, Colorado 80215.
42

1 11. The property located at 1411 Fenton St. is “residential real property” within the
2 meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42
3 U.S.C. § 4851b(24), that was constructed before 1978.
4

5 12. The Mt. Vernon Manor Apartments property consists of approximately 32
6 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based
7 Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
8

9 13. Prior to March 1, 2007, Respondents were not providing an EPA-approved lead
10 hazard information pamphlet prior to entering into lease contracts on at least 6 separate
11 occasions. Prior to March 1, 2007, Respondents were not including the lead warning disclosure
12 statement as defined in 40 C.F.R. § 745.113(b), within its lease contracts on at least 6 separate
13 occasions.
14

15 14. On May 8, 2007, Respondents entered into written lease agreement (lease
16 contract) with Brandon Harell, Jamie George and a four year old child for the rental of Apartment
17 114, a residential apartment unit in the Mt. Vernon Manor Apartment complex. As part of
18 entering into this lease agreement, Respondents failed to comply with the following
19 requirements:
20

- 21 a. Respondents failed to include the lead warning statement in 40 C.F.R.
22 § 745.113(b)(1) within the lease contract described above before the
23 renters/lessees were obligated in violation of 40 C.F.R. § 745.113(b)(1), 42 U.S.C.
24 § 4852d(b)(5), 15 U.S.C. § 2689.
25
- 26 b. Respondents failed to include a statement disclosing the presence of any known
27 lead-based paint and/or lead-based paint hazards (or lack of knowledge of such
28 presence), within the lease contract described above before the renters/lessees
29 were obligated in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C.
30 § 4852d(b)(5), 15 U.S.C. § 2689.
31
- 32 c. Respondents failed to include a list of any records or reports available to the
33 owner related to lead-based paint or hazards (or a statement that no such records
34 exist) within the lease contract described above before the renters/lessees were
35 obligated in violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15
36 U.S.C. § 2689.
37
- 38 d. Respondents failed to include a statement by the renters/lessees that they had
39 received the information described above in violation 40 C.F.R. § 745.113(b)(4),
40 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
41
- 42 e. Respondent failed to include the signature of the lessor and lessee certifying to the
43 accuracy of the their statements, to the best of their knowledge along with the

1 dates of signature, in violation 40 C.F.R. § 745.113(b)(6), 42 U.S.C.
2 § 4852d(b)(5), 15 U.S.C. § 2689.
3

4 **PROPOSED CIVIL PENALTY**

5

6 15. The Residential Lead Hazard Act and TSCA, as amended by subsequent penalty
7 adjustment law, authorize the assessment of a civil penalty of up to \$11,000 for each violation of
8 the EPA regulations. In determining the amount of any civil penalty assessed, EPA is required to
9 take into account the nature, circumstances, extent and gravity of the violation or violations
10 alleged and, with respect to the violator, ability to pay, effect on ability to continue to do
11 business, any history of prior such violations, the degree of culpability, and such other factors as
12 justice may require. **EPA proposes that a penalty of Two Thousand Two Hundred Dollars**
13 **(\$2,200.00)** be assessed against Respondents for the violations alleged above.
14

15 16. EPA calculates penalties through the application of a national enforcement
16 response policy that provides a rational, consistent and equitable calculation methodology for
17 applying the statutory factors to particular cases. As discussed in the policy, the severity of each
18 violation alleged in the complaint is based on the extent to which each violation impairs the
19 ability of a lessee to assess information regarding hazards associated with lead-based paint, and
20 precludes the lessee from making a fully informed decision whether to lease the housing or take
21 appropriate measures to protect against lead-based paint hazards.
22

23 17. The penalty was calculated using the Section 1018 of Title X of the Residential
24 Lead-Based Paint Hazard Reduction Act – Disclosure Rule Enforcement Response Policy (ERP),
25 dated February 2000, a copy of which is enclosed.
26

27 Nature, Circumstances, Extent and Gravity of Violations

28

29 The nature of the violations is hazard assessment, as discussed on page 9 of the ERP. The
30 circumstance level of the violations ranged from Level 1 to Level 6, based on the circumstance
31 level matrix in Appendix B of the ERP. The extent level of the violations was *minor*, based on
32 the extent level matrix on page B-4 of the ERP. Using the gravity-based penalty matrix on page
33 B-4 of the ERP, which combines the circumstance and extent level for each Count, the gravity-
34 based penalty amount is \$2,750.
35

36 Statutory Factors

37

38 Ability to pay/ability to continue in business: EPA does not have any information on the
39 Respondents' ability to pay. No adjustment has been made using this factor.
40

41 History of prior violations: This factor only adjusts the penalty upward. No history of prior
42 violations found, so no adjustment has been made using this factor
43

1 Degree of culpability: The Residential Lead Hazard Act has been in effect since 1996.
2 Respondents should have had sufficient knowledge to recognize the hazard created by his
3 conduct, and/or significant control over the situation to avoid committing the violation. Further,
4 Respondents were advised of the Residential Lead Hazard Act during an inspection that took
5 place on March 1, 2007, and was provided with compliance materials. No adjustment has been
6 made using this factor.

7
8 Other factors as justice may require:
9

10 Respondents attempted to comply with the Residential Lead Hazard Act after the
11 March 1, 2007, inspection. After this inspection, Respondents completed their own lead based
12 paint disclosures. However, the disclosure forms are not consistent with the requirements stated
13 in 40 C.F.R. § 745.113(b). A 20% downwards adjustment to the penalty was made based on
14 Respondents' effort to comply with the disclosure requirements.

15
16 **The total adjusted penalty is \$2,200.00.**
17

18 18. The ALJ is not bound by EPA's penalty policy nor the penalty proposed in the
19 Complaint and may assess a penalty above the proposed amount, up to the maximum amount
20 authorized by the statute.
21
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

CERTIFICATION OF SERVICE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

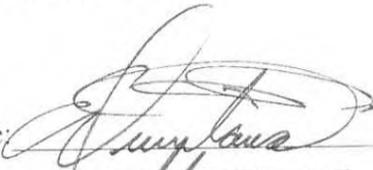
I hereby certify that on this 25 day of September, 2007, a copy of the foregoing Penalty Complaint and Notice of Opportunity for Hearing, with enclosures was served by certified mail, return receipt requested to:

Waclaw and Janina Jarosz
12274 W. Applewood Knolls Dr.
Lakewood, CO 80215

The original and one copy was hand-delivered to:

Tina Artemis
Region 8 Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

Date: SEP 2

Signature: 

Name and Title: attorney

Environmental Protection Agency

Pt. 22

will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 *Ex parte* discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

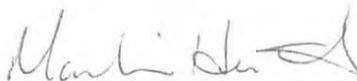
- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]
- 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
- 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public

1 **In the Matter of: Waclaw J. Jarosz and Janina Jarosz**
2 **Docket No.: TSCA-08-2007-0012**

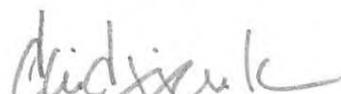
3
4
5 To discuss settlement or ask any questions you may have about this process, please
6 contact Eduardo Quintana, Senior Enforcement Attorney, at the number or address below.

7
8 United States Environmental Protection Agency
9 Region 8, Office of Enforcement, Compliance and
10 Environmental Justice, Complainant

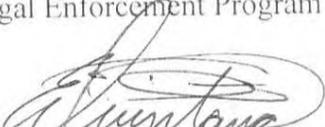
11
12
13
14
15 Date: 9/20/07

16 By: 
17 Martin Hestmark, Director
18 Technical Enforcement Program

19
20 Date: SEP 21 2007

21 By: 
22 Michael T. Risner, Director
23 David J. Janik, Supervisory Attorney
24 Legal Enforcement Program

25
26 Date: 9/19/2007

27 
28 Eduardo Quintana,
29 Senior Enforcement Attorney
30 Legal Enforcement Program
31 U.S.E.P.A. Region 8
32 1595 Wynkoop Street (ENF-L)
33 Denver, CO 80202-1129
34 303.312.6924
35 1.800.227.6924; ext. 312-6924
36