



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 SEP 23 A 11:35
REGIONAL HEARING
CLERK

SEP 21 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Demetrios Moragianis
Proto Property Services, LLC
3601 A Fieldston Road
Bronx, New York 10463

Re: In the Matter of **Proto Property Services, LLC**
Docket No. TSCA-02-2010-9266

Dear Mr. Moragianis:

Enclosed is the Complaint and Notice of Opportunity for Hearing (the Complaint) and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control Act (TSCA), Section 409, and regulations promulgated pursuant to TSCA set forth at 40 C.F.R. Part 745 Subpart F.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

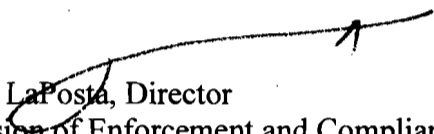
EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these SEPs are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

William Slochowsky, Esq.
Slochowsky and Slochowsky
26 Court Street
Brooklyn, NY 11242

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11
2010 SEP 23 A 11:35
FEDERAL HEARING
OFFICE

----- x
In the Matter of :
:
Proto Property Services, LLC, :
:
Respondent. :
:
Proceeding under Section 16(a) of :
the Toxic Substances Control Act. :
----- x

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Docket No.
TSCA-02-2010-9266

COMPLAINT

This is a civil administrative action instituted pursuant to § 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.* This Complaint serves notice of Complainant's preliminary determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745 Subpart F, which were promulgated pursuant to § 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, codified at 42 U.S.C. § 4851 *et seq.* (hereinafter "§ 1018").

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

1. Respondent is Proto Property Services, LLC (hereinafter "Respondent").
2. Respondent's primary place of business is located at 3601A Fieldston Road, Bronx, New York 10463.
3. Respondent is subject to the regulations and requirements pertaining to Lead-Based Paint Disclosure promulgated pursuant to 42 U.S.C. § 4852d, and set forth at 40 C.F.R. Part 745, Subpart F.
4. On or about July 1, 2008, duly designated representatives of EPA conducted an inspection of lease file papers at the offices of Proto Property Services, LLC, at the abovementioned address in Bronx, NY.
5. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the "agent", as that term is defined in 40 C.F.R. § 745.103, for the property known as 600 East 21st Street, Brooklyn, NY (hereinafter the "600 East 21st Street property").

6. The 600 East 21st Street property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
7. The 600 East 21st Street property consists of approximately 45 “residential dwelling” units within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
8. The 600 East 21st Street property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103.
9. On or about January 21, 2008, Winston Wilson entered into a contract to renew the lease for apartment unit 9 A in the 600 East 21st Street property from Respondent.
10. On or about July 16, 2008, Daluxon Jean Pierre and Gerald Soulouque entered into a contract to renew the lease for apartment unit 4 C in the 600 East 21st Street property from Respondent. Tenant signed a NYC Health Department window guard form on July 16, 2008, indicating a child under the age of 10 resides in the apartment.
11. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “agent”, as that term is defined in 40 C.F.R. § 745.103, for the property known as 510 Quincy Street, Brooklyn, NY (hereinafter the “510 Quincy Street property”).
12. The 510 Quincy Street property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
13. The 510 Quincy Street property consists of numerous “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
14. The 510 Quincy Street property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103.
15. On or about February 26, 2007, Carmella Smith entered into a contract to renew the lease for apartment 4 J in the 510 Quincy Street property from Respondent.
16. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “agent”, as that term is defined in 40 C.F.R. § 745.103, of the property known as 522 Quincy Street, Brooklyn, NY (hereinafter the “522 Quincy Street property”).
17. The 522 Quincy Street property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
18. The 522 Quincy Street property consists of numerous “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.

19. The 522 Quincy Street property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103.
20. On or about March 15, 2007, Tressa Moore entered into a contract to renew the lease of apartment unit 4 B of the 522 Quincy Street property from Respondent.
21. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “agent”, as that term is defined in 40 C.F.R. § 745.103, for the property known as 671 Gates Avenue, Brooklyn, NY 11221 (hereinafter the “671 Gates Avenue property”).
22. The 671 Gates Avenue property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
23. The 671 Gates Avenue property consists of numerous “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
24. The 671 Gates Avenue property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103.
25. On or about October 1, 2007, Karen Diaz entered into a contract to renew the lease for apartment 2 D in the 671 Gates Avenue property from Respondent. At the time of contract renewal, a child under 10 years of age was residing at this address.
26. On or about February 4, 2008, Patricia Etheah entered into a contract to renew the lease for apartment 5 C in the 671 Gates Avenue property from Respondent. At the time of contract renewal, a child under 10 years of age was residing at this address.
27. On or about December 1, 2007, Justina Williams entered into a contract to renew the lease for apartment 4 A in the 671 Gates Avenue property from Respondent. At the time of contract renewal, a child under 10 years of age was residing at this address.
28. On or about April 30, 2007, Dorothy Sterling and Dinah Brewster entered into a contract to renew the lease for apartment 4 H in the 671 Gates Avenue property from Respondent. At the time of contract renewal, a child under 10 years of age was residing at this address.
29. Each of the persons leasing the apartments in paragraphs 9, 10, 15, 20, and 25 - 28, above, is a “lessee” of target housing as that term is defined at 40 C.F.R. § 745.103.
30. None of the real estate transactions listed in paragraph 29, above, constitute an exempt transaction pursuant to 40 C.F.R. § 745.101.

COUNT 1

Lead Warning Statement

31. Paragraphs 1 through 30 are realleged and incorporated as if fully set forth herein.
32. Under 40 C.F.R. § 745.113(b)(1), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a "Lead Warning Statement" which is set forth in the regulation.
33. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
34. Upon information and belief, Respondent acted as the agent for the lease of target housing units listed in paragraphs 10, 15, and 20 above.
35. For the real estate transactions for the rental of the target housing units described in paragraph 34 above, the contract to lease did not contain a Lead Warning Statement nor was the statement attached to the contract for lease.
36. Failure to include a Lead Warning Statement in the contract to lease is a violation of 40 C.F.R. § 745.113(b)(1).
37. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(1) or to personally ensure compliance with 40 C.F.R. § 745.113(b)(1) constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2) which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 2

Statement by the Lessor Disclosing Known Lead-Based Paint

38. Paragraphs 1 through 30 are realleged and incorporated as if fully set forth herein.
39. Under 40 C.F.R. § 745.113(b)(2), the lessor shall include in each contract to lease target housing, 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 or indicating no knowledge of such presence.
40. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
41. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 9, 10, 15, 20, and 25 - 28, above.
42. For the real estate transactions for the rental of the apartments described in paragraph 41, above, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence was not included within nor attached to the contracts to lease, at the time of leasing.

43. Failures to include or attach a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence to the contract to lease are violations of 40 C.F.R. § 745.113(b)(2).
44. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(2), or to personally ensure compliance with 40 C.F.R. § 745.113(b)(2), constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 3

List of Records or Reports Pertaining to Lead-Based Paint

45. Paragraphs 1 through 30 are realleged and incorporated as if fully set forth herein.
46. Under 40 C.F.R. § 745.113(b)(3), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or an indication that no such records or reports are available.
47. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
48. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 9, 10, 15, and 20, above.
49. For the real estate transactions for the rental of the apartments described in paragraph 48, above, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessees, or an indication that no such records or reports are available, was not attached to the contracts to lease, at the time of leasing.
50. Failures to attach to the contract to lease a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or to indicate that no such records or reports are available, are violations of 40 C.F.R. § 745.113(b)(3).
51. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(3), or to personally ensure compliance with 40 C.F.R. § 745.113(b)(3), constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 4

EPA-Approved Lead Hazard Pamphlet

52. Paragraphs 1 through 30 are realleged and incorporated as if fully set forth herein.
53. Under 40 C.F.R. § 745.107(a)(1), each lessor shall provide the lessee with an EPA-approved lead hazard pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA #74K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.
54. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.107 or to personally ensure compliance with 40 C.F.R. § 745.107.
55. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 9, and 25 - 28, above.
56. For the real estate transactions for the rental of the apartments described in paragraph 55, above, the contracts contained as an attachment, a disclosure form that had been changed to indicate a NYC Health Department pamphlet, and not the EPA - approved pamphlet, had been provided to the tenants in the apartments listed in paragraph 52, above, at the time of leasing.
57. Failures to provide an EPA-approved lead hazard pamphlet to lessees are violations of 40 C.F.R. § 745.107(a)(1).
58. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.107(a)(1), or to personally ensure compliance with 40 C.F.R. § 745.107(a)(1), constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 5

Lessee's Receipt of Information

59. Paragraphs 1 through 30 are realleged and incorporated as if fully set forth herein.
60. Under 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming the receipt of: (1) the lessor's statement disclosing the presence of known lead-based paint (or indicating no knowledge); (2) the list of any records or reports available to the lessor pertaining to lead-based paint; and (3) the lead hazard information pamphlet.
61. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
62. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 10, 15, and 20, above.
63. For the real estate transactions for the rental of the apartments described in paragraph 62,

above, the contracts did not contain within the contracts nor as an attachment, the statement described in paragraph 60, above, at the time of leasing.

64. Failures of the contracts to contain the statement described in paragraph 60, above, are violations of 40 C.F.R. § 745.113(b)(4).
65. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(4) or to personally ensure compliance with 40 C.F.R. § 745.113(b)(4), constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 6

Lessor, Agent and Lessee Certification Statement

66. Paragraphs 1 through 30 are realleged and incorporated as if fully set forth herein.
67. Under 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include, as an attachment or within the contract, 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.
68. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
69. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 9, 10, 15, and 20, above.
70. For the real estate transactions for the rental of the apartments described in paragraph 69, above, the contracts did not contain signatures of the lessor, agents, or lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, at the time of leasing.
71. Failures of the contracts to include 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 the signature, are violations of 40 C.F.R. § 745.113(b)(6).
72. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(6), or to personally ensure compliance with 40 C.F.R. § 745.113(b)(6), constitutes failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with § 1018 and 40 C.F.R. § 745.118(f), which authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum amount has been adjusted to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69361 (1996), for violations occurring after January 30, 1997. See 62 Fed. Reg. 35038 (1997). Penalties for violations occurring after March 15, 2004 were further

adjusted for inflation by the Agency effective October 1, 2004.

For purposes of determining the amount of any penalty to be assessed, § 16 requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged. As to the violator, § 16 requires EPA to take into account its ability to pay, the effect of the penalty on its ability to continue to do business, its history of prior such violations, its degree of culpability, as well as such other matters as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time, with specific reference to EPA's "Guidelines for Assessment of Civil Penalties Under § 16 of the Toxic Substances Control Act," which was published on September 10, 1980 in the Federal Register (45 Fed. Reg. 59,770), and EPA's December 2007 "§ 1018 Disclosure Rule Enforcement Response and Penalty Policy." These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases. Copies of these documents are available on request, or can be found on the web at <http://cfpub.epa.gov/compliance/resources/policies/civil/tsca/>.

Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes, subject to receipt and evaluation of further relevant information that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

COUNT 1: Lead Warning Statement

Circumstance Level: **2**

Total number of violations: **3**

Extent Category Minor: **2**

 Significant: **1**

Penalty Per Violation: Minor (occupant over 18) = \$ 1,550

 Significant (child between 7 and 17 present) = \$6,450

2 Minor violations x \$ 1,550 = \$3,100

1 Significant violation = \$6, 450

Total Proposed Assessment for this Count:

\$9,550

COUNT 2: Statement by Lessor Disclosing Known Lead-Based Paint, or No Knowledge

Circumstance Level: **3**

Total number of violations: **8**

Extent Category Minor: **3**

 Significant: **5**

Penalty Per Violation: Minor (occupant over 18) = \$770

 Significant (child between 7 and 17 present) = \$5,160

3 Minor violations x \$770 = \$2,310

5 Significant violations x \$5,160 = \$25,800

Total Proposed Assessment for this Count:

\$ 28,110

COUNT 3: List of Records or Reports Pertaining to Lead-Based Paint

Circumstance Level: **5**

Total number of violations: **4**

Extent Category: Minor: **3**

Significant: **1**

Penalty Per Violation: Minor (occupant over 18) = \$260

Significant (child between 7 and 17 present) = \$1,680

3 Minor violations x \$260 = \$ 780

1 Significant violation = \$1,680

Total Proposed Assessment for this Count: \$2,460

COUNT 4: EPA-Approved Lead Hazard Pamphlet

Circumstance Level: **1**

Total number of violations: **5**

Extent Category: Minor: **1**

Significant: **4**

Penalty Per Violation: Minor (occupant over 18) = \$ 2,580

Significant (child between 7 and 17 present) = \$ 7,740

1 Minor violation = \$2,580

4 Significant violations x \$7,740 = \$30,960

Total Proposed Assessment for this Count: \$33,540

COUNT 5: Lessee's Receipt of Pamphlet and Information

Circumstance Level: **4**

Total number of violations: **3**

Extent Category: Minor: **2**

Significant: **1**

Penalty Per Violation: Minor (occupant over 18) = \$ 520

Significant (child between 7 and 17 present) = \$3,220

2 Minor violations x \$520 = \$1,040

1 Significant violation x \$3220

Total Proposed Assessment for this Count: \$4,260

COUNT 6: Lessor, Agent and Lessee Certification Statement

Circumstance Level: **6**

Total number of violations: **4**

Extent Category: Minor: **3**

Significant: **1**

Penalty Per Violation: Minor (occupant over 18) = \$130

Significant (child between 7 and 17 present) = \$640

3 Minor violations x \$130 = \$ 390

1 Significant violation x \$640 = \$ 640

Total Proposed Assessment for this Count: \$1,030

TOTAL PROPOSED PENALTY \$ 78,950

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," and are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). See generally Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the

applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. See Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: "A civil penalty for a violation of Section 2614 or 2689 of this title [15 U.S.C. § 2614, § 2689] shall be assessed by the Administrator by an order made on the record after opportunity...for a hearing in accordance with Section 554 of Title 5 [5 U.S.C. § 554]."

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA order. See 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Stuart N. Keith, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866
(212)-637-3217

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R.

§ 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

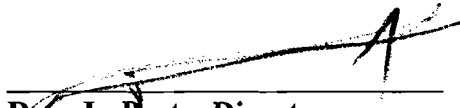
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA attorney identified on the previous page.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

In the Matter of Proto Property Services, LLC
Docket No. TSCA-02-2010-9266

DATE: SEPTEMBER 21, 2010


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2

In the Matter of Proto Property Services, LLC
Docket No. TSCA-02-2010-9266

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number TSCA-02-2010-9266, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Mr. Demetrios Moragianis
Proto Property Services, LLC
3601A Fieldston Road
Bronx, New York 10463

I hand carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: SEP 23 2010
New York, New York

Mildred N. Bag