



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 27 2011

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

RECEIPT NO: 7009 1680 0000 7666 9054

Mr. William L. Caplan
Buckingham, Doolittle and Burroughs, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333-8332

Re: In the matter of: Keith Mirman Docket number: TSCA-05-2011-0012

Dear Mr. Caplan:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency against Keith Mirman under 16(a) of the Toxics Substances Control Act, 15 U.S.C. § 2615(a), and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), at 40 C.F.R. Part 22.

As provided in the Complaint, if you would like to request a hearing, you must file an answer to the Complaint in which you specifically request a hearing. You must file your answer within 30 days after receiving the Complaint with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 and send a copy to Steve Kaiser, Office of Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please note that if you do not file an answer to the Complaint within 30 days after receiving the Complaint, EPA may seek a default order assessing the proposed penalty and the assessed penalty will be due 30 days after the order becomes final.

If you intend to file with the Regional Hearing Clerk, as part of the record in this matter, any document that includes trade secrets, proprietary information or any business information that you claim is entitled to confidential treatment, you may submit the document "under seal." The rules for submitting confidential information under seal are set forth at Section 22.5(d) of the Consolidated Rules, 40 C.F.R. § 22.5(d). You should also refer to 40 C.F.R. Part 2, Subpart B. For more information about the procedures for submitting information under seal, go to: <http://epa.gov/oalj/orders/alj-practice-manual.pdf>. EPA reserves its right to object to the submission of documents under seal.

Whether or not you request a hearing, you may request an informal settlement conference. If you would like to request a conference, or if you have any questions about this matter, please contact Steve Kaiser, Attorney, Assistant/Associate Regional Counsel at (312) 353-3804 or Christine Anderson (312) 886-9749.

Sincerely,

A handwritten signature in black ink, appearing to read 'Margaret M. Guerriero', written over a circular stamp or mark.

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

cc: Regional Hearing Clerk (E-19J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Keith Mirman
Akron, Ohio

Respondent,



Docket No. TSCA-05-2011-0012

Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. Respondent is Keith Mirman, an individual doing business in the State of Ohio.

Statutory and Regulatory Background

4. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and sales. Section 1018, 42 U.S.C. § 4852d,

requires the Administrator of EPA and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. On March 6, 1996, EPA and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with the Disclosure Rule by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d that impose certain requirements on the sale or lease of target housing.

7. 40 C.F.R. § 745.103 defines target housing as 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) or any 0-bedroom dwelling.

8. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

9. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

11. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

12. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

13. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997, through January 12, 2009, and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

General Allegations

14. Complainant incorporates paragraphs 1 through 13 of this Complaint as if set forth in this paragraph.

15. Between at least September 19, 2006, and April 24, 2009, Respondent owned residential dwellings at 656 East Avenue, 1063 Delia Avenue, 1139 Winton Avenue, 911 Storer Avenue, and 387 Grand Avenue all located within Akron, Ohio (Respondent's Properties).

16. Respondent's Properties were constructed prior to 1978.
17. Respondent's Properties are "target housing" as defined in 40 C.F.R. § 745.103.
18. On the following dates, Respondent, either directly or through his authorized agent, entered into the following six written lease agreements (contracts) with individuals for the lease of residential dwellings:

Address	Date of Lease Obligation
656 East Avenue, Akron, Ohio	September 19, 2006
656 East Avenue, Akron, Ohio	October 9, 2006
1063 Delia Avenue, Akron, Ohio	April 2, 2009
1139 Winton Avenue, Akron, Ohio	December 7, 2007
911 Storer Avenue, Akron, Ohio	March 6, 2008
387 Grand Avenue, Akron, Ohio	April 24, 2009

19. Each of the six contracts referenced in paragraph 18, above, covered a term of occupancy greater than 100-days.
20. Between September 19, 2006, and April 24, 2009, Respondent offered for lease his residential dwellings, and individuals entered into contracts on the dates listed in paragraph 18, above, to lease those dwellings.
21. Respondent is a "lessor", as defined in 40 C.F.R. § 745.103, because he has offered the target housing referenced in paragraph 18, above, for lease.
22. Each individual who signed a lease to pay rent in exchange for occupancy of a dwelling, referenced in paragraph 18, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

23. On April 7, 2010, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. If Respondent believed there were financial factors that bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

24. On April 13, 2010, Respondent received the pre-filing notice letter referred to in paragraph 23, above. Respondent replied to the letter on June 2, 2010, and provided a narrative response to the alleged violations. Respondent did not claim an inability to pay the proposed, approximate civil penalty and did not provide facts or other information concerning his ability to pay the proposed, approximate civil penalty.

25. In letters dated June 8, 2010, and August 4, 2010, Respondent provided additional information to Complainant. Complainant has considered all of the information provided by Respondent in assessing the alleged violations and proposing a penalty.

26. Respondent does not have an inability to pay the proposed penalty of \$92,675.

Counts 1 through 6

27. Complainant incorporates paragraphs 1 through 26 of this Complaint as if set forth in this paragraph.

28. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(1) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a Lead Warning Statement.

29. **Count 1**: Respondent failed to include, either within the contract or as an

attachment to the contract dated September 19, 2006, for 656 East Avenue, Akron, Ohio, a Lead Warning Statement.

30. **Count 2**: Respondent failed to include, either within the contract or as an attachment to the contract dated October 9, 2006, for 656 East Avenue, Akron, Ohio, a Lead Warning Statement.

31. **Count 3**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 2, 2009, for 1063 Delia Avenue, Akron, Ohio, a Lead Warning Statement.

32. **Count 4**: Respondent failed to include, either within the contract or as an attachment to the contract dated December 7, 2007, for 1139 Winton Avenue, Akron, Ohio, a Lead Warning Statement.

33. **Count 5**: Respondent failed to include, either within the contract or as an attachment to the contract dated March 6, 2008, for 911 Storer Avenue, Akron, Ohio, a Lead Warning Statement.

34. **Count 6**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 24, 2009, for 387 Grand Avenue, Akron, Ohio, a Lead Warning Statement.

35. Respondent's failure to include, either within each contract or as an attachment, a Lead Warning Statement for each leasing transaction referred to in paragraphs 29 through 34, above, constitutes six violations of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 7 through 12 [745.113(b)(2)]

36. Complainant incorporates paragraphs 1 through 26 of this Complaint as if set forth in this paragraph.

37. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

38. **Count 7:** Respondent failed to include, either within the contract or as an attachment to the contract dated September 19, 2006, for 656 East Avenue, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

39. **Count 8:** Respondent failed to include, either within the contract or as an attachment to the contract dated October 9, 2006, for 656 East Avenue, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

40. **Count 9:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 2, 2009, for 1063 Delia Avenue, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

41. **Count 10:** Respondent failed to include, either within the contract or as an attachment to the contract dated December 7, 2007, for 1139 Winton Avenue, Akron, Ohio, a

statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

42. **Count 11**: Respondent failed to include, either within the contract or as an attachment to the contract dated March 6, 2008, for 911 Storer Avenue, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

43. **Count 12**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 24, 2009, for 387 Grand Avenue, Akron, Ohio, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

44. Respondent's failure to include, either within each contract or as an attachment, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased or a lack of knowledge of such presence for each leasing transaction referred to in paragraphs 38 through 43, above, constitutes six violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 13 through 18 [745.113(b)(3)]

45. Complainant incorporates paragraphs 1 through 26 of this Complaint as if set forth in this paragraph.

46. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a list of any records or reports available to

the lessor regarding lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee or a statement that no such records are available.

47. **Count 13**: Respondent failed to include, either within the contract or as an attachment to the contract dated September 19, 2006, for 656 East Avenue, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

48. **Count 14**: Respondent failed to include, either within the contract or as an attachment to the contract dated October 9, 2006, for 656 East Avenue, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

49. **Count 15**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 2, 2009, for 1063 Delia Avenue, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

50. **Count 16**: Respondent failed to include, either within the contract or as an attachment to the contract dated December 7, 2007, for 1139 Winton Avenue, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

51. **Count 17**: Respondent failed to include, either within the contract or as an attachment to the contract dated March 6, 2008, for 911 Storer Avenue, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

52. **Count 18**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 24, 2009, for 387 Grand Avenue, Akron, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

53. Respondent's failure to include, either within each contract or as an attachment, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee, or a statement that no such records are available, for each leasing transaction referred to in paragraphs 47 through 52, above, constitutes six violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 19 through 24 [745.113(b)(4)]

54. Complainant incorporates paragraphs 1 through 26 of this Complaint as if set forth in this paragraph.

55. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information

set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

56. **Count 19**: Respondent failed to include, either within the contract or as an attachment to the contract dated September 19, 2006, for 656 East Avenue, Akron, Ohio, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

57. **Count 20**: Respondent failed to include, either within the contract or as an attachment to the contract dated October 9, 2006, for 656 East Avenue, Akron, Ohio, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

58. **Count 21**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 2, 2009, for 1063 Delia Avenue, Akron, Ohio, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

59. **Count 22**: Respondent failed to include, either within the contract or as an attachment to the contract dated December 7, 2007, for 1139 Winton Avenue, Akron, Ohio, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

60. **Count 23**: Respondent failed to include, either within the contract or as an attachment to the contract dated March 6, 2008, for 911 Storer Avenue, Akron, Ohio, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

61. **Count 24:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 24, 2009, for 387 Grand Avenue, Akron, Ohio, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

62. Respondent's failure to include, either within each contract or as an attachment, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696 for each leasing transaction referred to in paragraphs 56 through 61, above, constitutes six violations of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 25 through 30 [745.113(b)(6)]

63. Complainant incorporates paragraphs 1 through 26 of this Complaint as if set forth in this paragraph.

64. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

65. **Count 25:** Respondent failed to include, either within the contract or as an attachment to the contract dated September 19, 2006, for 656 East Avenue, Akron, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

66. **Count 26**: Respondent failed to include, either within the contract or as an attachment to the contract dated October 9, 2006, for 656 East Avenue, Akron, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

67. **Count 27**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 2, 2009, for 1063 Delia Avenue, Akron, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

68. **Count 28**: Respondent failed to include, either within the contract or as an attachment to the contract dated December 7, 2007, for 1139 Winton Avenue, Akron, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

69. **Count 29**: Respondent failed to include, either within the contract or as an attachment to the contract dated March 6, 2008, for 911 Storer Avenue, Akron, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

70. **Count 30**: Respondent failed to include, either within the contract or as an attachment to the contract dated April 24, 2009 for 387 Grand Avenue, Akron, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

71. Respondent's failure to include, either within each contract or as an attachment, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures for each leasing transaction referred to in paragraphs 65 through 70, above,

constitutes six violations of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Proposed Civil Penalty

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

Count 1

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(1).....\$1,550

Count 2

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(1).....\$1,550

Count 3

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(1).....\$9,675

Count 4

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(1).....\$6,450

Count 5

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(1).....\$1,550

Count 6

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(1).....\$15,000

Count 7

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(2).....\$770

Count 8

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(2).....\$770

Count 9

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(2).....\$7,740

Count 10

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(2).....\$5,160

Count 11

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(2).....\$770

Count 12

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(2).....\$11,600

Count 13

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(3).....\$260

Count 14

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(3).....\$260

Count 15

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(3).....\$2,520

Count 16

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(3).....\$1,680

Count 17

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(3).....\$260

Count 18

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(3).....\$3,870

Count 19

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(4).....\$520

Count 20

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(4).....\$520

Count 21

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(4).....\$4,830

Count 22

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(4).....\$3,220

Count 23

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(4).....\$520

Count 24

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(4).....\$7,700

Count 25

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(6).....\$130

Count 26

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(6).....\$130

Count 27

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(6).....\$960

Count 28

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(6).....\$640

Count 29

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(6).....\$130

Count 30

42 U.S.C. § 4852d(b)(5) and
40 C.F.R. § 745.113(b)(6).....\$1,940

Total Proposed Civil Penalty \$92,675

73. In determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

74. EPA calculates penalties by applying its *Section 1018 - Disclosure Rule Enforcement Response Policy* dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

75. As stated in paragraph 23, above, by letter dated April 7, 2010, EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of Section 1018 and that Section 1018 authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA

should consider before issuing the complaint, and if Respondent believed there were financial factors that bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

Respondent did not claim an inability to pay a penalty and has provided no facts or information that would indicate that the penalty should be adjusted for financial or other factors related to the alleged violation.

Rules Governing This Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Steven Kaiser to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Kaiser at (312) 353-3804. His address is:

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

Penalty Payment

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

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

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

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

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that he is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above.

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

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

If Respondent does not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations.

Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Mr. Kaiser at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

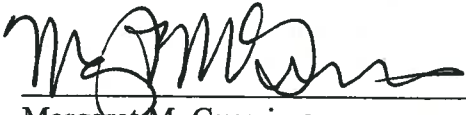
Continuing Obligation to Comply

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to comply with TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondent in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

6/24/11
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

RECEIVED
JUN 27 2011
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

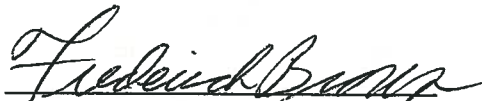
CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Complaint involving Mr. Keith Mirman, was filed on June 27, 2011 with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7009 1680 0000 7666 9054, 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:

Mr. William L. Caplan
3800 Embassy Parkway, Suite 300
Akron, OH 44333-8332

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Steve Kaiser, 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. TSCA -05-2011-0012

RECEIVED

JUN 27 2011

**REGIONAL HEARING CLERK
USEPA
REGION 5**