



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
Jeffrey S. Nast, Sr. Assistant Regional Counsel

February 10, 2009

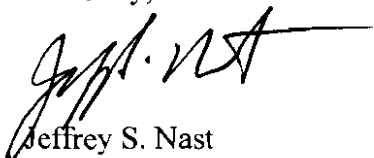
The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Mail Code 1900L
1099 14th St., N.W.
Washington, D.C. 20460

RE: Tony J. Papadimitriou (TSCA-03-2008-0035)

Dear Judge Gunning:

Please find enclosed Complainant's Motion for Accelerated Decision as to Liability and a Brief in Support.

Sincerely,



Jeffrey S. Nast
Sr. Asst. Regional Counsel
Region III

cc: Charles B. Haws, Esq. (FedEx)



**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

**Tony J. Papadimitriou
95 West Roseville Road
Lancaster, PA 17601-3928**

**U.S. EPA Docket No.:
TSCA-03-2008-0035**

RESPONDENT.

- 230 E. Ross St., #1, Lancaster, PA 17602
- 230 E. Ross St., #2, Lancaster, PA 17602
- 237 E. Rock St., Lancaster, PA 17602
- 305 E. Filbert St., #2, Lancaster, PA 17603
- 491 New Holland Ave., #2, Lancaster, PA 17602
- 491 New Holland Ave., #3, Lancaster, PA 17602
- 602 N. Marshall St., #1, Lancaster, PA 17602
- 602 N. Marshall St., #4, Lancaster, PA 17602
- 713 N. Duke St., #1, Lancaster, PA 17602
- 713 N. Duke St., #2, Lancaster, PA 17602
- 713 N. Duke St., #3, Lancaster, PA 17602
- 713 N. Duke St., #4, Lancaster, PA 17602
- 721 N. Shippen St., #2 Lancaster, PA 17602

TARGET HOUSING.

**COMPLAINANT'S MOTION FOR ACCELERATED DECISION
AS TO LIABILITY AND BRIEF IN SUPPORT**

2009 FEB 10 PM 4:47

RECEIVED

TABLE OF CONTENTS

	Page
I. <u>Introduction</u>	1
II. <u>Procedural Background</u>	1
III. <u>Standard for Accelerated Decision</u>	3
IV. <u>Factual Analysis</u> - No Genuine Issue of Material Fact Exists in the Action at Bar.....	5
V. <u>Legal Analysis</u> - Complainant is Entitled to Judgment as a Matter of law under Counts 1-26 of the Complaint.....	28
A. Respondent was required to comply with the Disclosure Rule in connection with the leasing of the Target Housing.....	28
1. The residential dwellings located at 230 E. Ross St., #1, 230 E. Ross St., #2, 237 E. Rock St., 305 E. Filbert St., #2, 491 New Holland Ave., #2, 491 New Holland Ave., #3, 602 N. Marshall St., #1, 602 N. Marshall St., #4, 713 N. Duke St., #1, 713 N. Duke St., #2, 713 N. Duke St., #3, 713 N. Duke St., #4, and 721 N. Shippen St., #2, Lancaster, Pennsylvania qualify as “Target Housing”.....	28
2. Respondent was the “owner” and “lessor” of Target Housing	29
B. Respondent failed to comply with the Disclosure Rule regarding the leasing of the target housing.....	30
1. Counts 1-2 - Respondent violated 40 C.F.R. § 745.107(a)(1) in connection with leasing of the target housing.....	30
a. Count 1.....	30
b. Count 2.....	31
2. Count 3 - Respondent violated 40 C.F.R. § 745.107(a)(2) in connection with the leasing of the target housing.....	32
3. Count 4 - Respondent violated 40 C.F.R. § 745.107(a)(4) in connection with the leasing of the target housing.....	34
4. Counts 5-9 - Respondent violated 40 C.F.R. § 745.113(b)(1) in connection with the leasing of the target housing.....	35
a. Counts 5, 7, and 9.....	35

b.	Count 6.....	36
c.	Count 8.....	37
5.	Counts 10-14 - Respondent violated 40 C.F.R. § 745.113(b)(2) in connection with the leasing of the target housing.....	38
6.	Counts 15-25 - Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with the leasing of the target housing.....	40
a.	Count 15.....	40
b.	Counts 16-20.....	40
c.	Count 21.....	42
d.	Count 22.....	44
e.	Count 23.....	45
f.	Count 24.....	47
g.	Count 25.....	48
7.	Count 26 - Respondent violated 40 C.F.R. § 745.113(b)(6) in connection with the leasing of the target housing.....	50
VI.	<u>Conclusion</u>	52

TABLE OF AUTHORITIES

	Page
<i>CASELAW</i>	
Federal Judicial Decisions:	
<u>Adickes v. S.H. Kress & Co.</u> , 398 U.S. 144 (1970).....	5
<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242 (1985).....	4, 5
<u>Celotex Corp. v. Catrett</u> , 477 U.S. 317 (1986).....	4
<u>Nunex v. Superior Oil Co.</u> , 572 F.2d 1119 (5 th Cir. 1978).....	6
EPA Administrative Decisions:	
<u>In re: BWX Technologies, Inc.</u> , 2000 EPA App. LEXIS 9 (E.A.B. April 5, 2000).....	4-6
<u>In re: Clarksburg Casket Co.</u> , 1999 EPA App. LEXIS 23 (E.A.B., July 16, 1999).....	4
<u>In re: Green Thumb Nursery, Inc.</u> , 6 E.A.D. 782 n. 23, 1997 EPA App. Lexis 4 (EAB 1997).....	5
<u>In the Matter of: Puerto Rico Aqueduct and Sewer Authority</u> , 2000 EPA ALJ LEXIS 2 (January 4, 2000).....	4, 5
<u>In the Matter of: Spring Crest Fuel Co., Inc.</u> , 2000 EPA ALJ LEXIS 55 (June 28, 2000)....	4, 5
<u>In the Matter of Vemco, Inc., d/b/a Venture Grand Rapids</u> , 2003 EPA ALJ LEXIS 29 (April 23, 2003).....	4, 5
<i>STATUTORY/REGULATORY REFERENCES</i>	
Statutory References:	
Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”)	1, 28
RLBPHRA Section 1018, 42 U.S.C. § 4852d.....	1
RLBPHRA Section 1004(23) and (27), 42 U.S.C. § 4851b(23) and (27).....	6
RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27).....	28, 29
Toxic Substances Control Act (“TSCA”) Section 401(17), 15 U.S.C. § 2681(17).....	28, 29
TSCA Section 409, 15 U.S.C. § 2689.....	2
Federal Rule of Civil Procedure - Rule 56.....	3
Regulatory References:	
40 C.F.R. 22.20(a).....	3
40 C.F.R. Part 22.....	5
40 C.F.R. § 22.15(d).....	41
40 C.F.R. Part 745, Subpart F.....	1, 2, 20, 28, 31-32
40 C.F.R. § 745.103.....	6, 28, 29, 30
40 C.F.R. § 745.107(a)(1).....	19, 23, 30-32
40 C.F.R. § 745.107(a)(2).....	20, 33-34
40 C.F.R. § 745.107(a)(4).....	21, 34-35
40 C.F.R. § 745.113(b)(1).....	35-38
40 C.F.R. § 745.113(b)(2).....	7, 9, 14, 22, 23, 38-40
40 C.F.R. § 745.113(b)(4).....	8, 10, 11-15, 18, 25-27, 40-50
40 C.F.R. § 745.113(b)(6).....	17, 50-51

MISCELLANEOUS REFERENCES

11 JAMES W. MOORE ET AL., Moore’s Federal Practice (3d ed. 1999)..... 4

I. Introduction

Pursuant to Sections 22.16(a) and 22.20 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Complaint or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "*Consolidated Rules of Practice*"), the Complainant in this proceeding, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III, ("Complainant" or "EPA") hereby moves for an accelerated decision as to the Respondent's liability for the violations alleged in the Complaint and Notice of Opportunity for Hearing (the "Complaint") filed by EPA in this proceeding. Because there are no genuine issues of material fact Complainant is entitled to a determination of Respondent's liability as a matter of law, Complainant respectfully requests an order granting the instant motion.

II. Procedural Background

On December 31, 2007, Complainant filed an Administrative Complaint and Notice of Opportunity against Tony J. Papadimitriou ("Respondent"), in which Complainant alleged that Respondent had violated Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. § 4852d, and the federal regulations promulgated thereunder as set forth at 40 C.F.R. Part 745, Subpart F (also known as the "Disclosure Rule"). More specifically, Complainant alleged in twenty-six (26) Counts in the Complaint that, in connection with fourteen (14) leases of target housing entered into by Respondent in which Respondent failed to make disclosures concerning lead-based paint to the prospective Lessees of the Target Housing as required by the Disclosure Rule, 40 C.F.R. Part 745, Subpart F.

Failure to comply with RLBPHRA Section 1018, 42 U.S.C. § 4852d, and the requirements of the

Disclosure Rule, 40 C.F.R. Part 745, Subpart F, is a violation of TSCA Section 409, 15 U.S.C. §2689, and renders Respondent subject to the assessment of civil and/or criminal penalties for the violations. As set forth in Complainant's Initial Prehearing Exchange and in its Penalty Calculation Worksheet (CX-7), the civil penalty sought by Complainant for Respondent's violations of the Disclosure Rule alleged in the Complaint is \$102,902.00.

Respondent, after numerous delays, on May 20, 2008 filed an Answer to Administrative Complaint and Request for Hearing ("Answer"). Although Respondent denied liability and requested an evidentiary hearing in their Answer, Respondent did make a number of admissions that establishes liability for violating the Disclosure Rule as alleged in the Complaint.

In light of Respondent's admission and other evidence referenced in this Brief, and for the reasons explained herein, Complainant requests that an Order be issued by this Presiding Officer granting Complainant's Motion for Accelerated Decision as to Liability and hold Respondent liable for Counts 1 - 26 in the Complaint.

Pursuant to the Presiding Officer's Order Scheduling Hearing ("Hearing Order") dated January 5, 2009, the Parties are advised that every motion filed must be served in sufficient time to permit the filing of a response by the other party and to permit the issuance of an order on that motion before the deadlines set by said Order or any subsequent Order. Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b), allows a fifteen-day (15) period for responses to motions and Section 22.7(c), 40 C.F.R. § 22.7(c), provides an additional five (5) days to be added thereto when the motion is served by mail. The Hearing Order sets February 24, 2009 as the date by which the parties shall file a joint set of stipulated facts, exhibits, and testimony. The hearing date is set for March 10, 2009.

III. Standard for Accelerated Decision

Motions for Accelerated Decision are governed by the standard set forth in 40 C.F.R. § 22.20(a) of the Consolidated Rules of Practice, which provides, in pertinent part, that,

The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

A long line of decisions by the Office of Administrative Law Judges and the Environmental Appeals Board has recognized that the language provided in 40 C.F.R. § 22.20(a) concerning motions for accelerated decision mirrors that provided for motions for summary judgment as set forth in Rule 56 of the Federal Rules of Civil Procedure (“F.R.C.P.”) and that, therefore, judicial rulings concerning F.R.C.P. 56 provide useful guidance for Presiding Officers to consider in ruling upon motions for accelerated decision. *See, e.g., In re: BWX Technologies, Inc.*, 2000 EPA App. LEXIS 9, *34 (E.A.B. April 5, 2000); *In re: Clarksburg Casket Co.*, 1999 EPA App. LEXIS 23, *15 (E.A.B., July 16, 1999); *In the Matter of Vemco, Inc., d/b/a Venture Grand Rapids*, 2003 EPA ALJ LEXIS 29 (April 23, 2003); and *In the Matter of: Spring Crest Fuel Co., Inc.*, 2000 EPA ALJ LEXIS 55, *12 (June 28, 2000).

Initially, the burden of showing the absence of any genuine issue of material fact rests with the party moving for accelerated decision. *BWX Technologies, Inc.*, 2000 EPA App. LEXIS at *38; *Spring Crest Fuel Co., Inc.*, 2000 EPA ALJ LEXIS at *12; and *In the Matter of: Puerto Rico Aqueduct and Sewer Authority*, 2000 EPA ALJ LEXIS 2, *5-6 (January 4, 2000), *citing*, *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once this burden has been satisfied, the burden of production shifts to the non-movant to identify specific facts from which a fact-finder, applying the appropriate evidentiary standard (i.e., preponderance of the evidence in matters governed by the Consolidated Rules of Practice), can reasonably find in favor of the non-movant. *BWX Technologies, Inc.*, 2000 EPA App. LEXIS at *39, *citing*,

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1985).

More specifically, in order to defeat a Motion for Accelerated Decision, the non-moving party must demonstrate that a “genuine” issue as to a “material” fact exists in the case. BWX Technologies, Inc., 2000 EPA App. LEXIS at *35, *citing*, Anderson, 477 U.S. at 248. A fact is deemed to be “material” if, under the law governing a proceeding, it might affect the outcome of the proceeding. BWX Technologies, Inc., 2000 EPA App. LEXIS at *35-36; and Puerto Rico Aqueduct and Sewer Authority, 2000 EPA ALJ LEXIS at *6-7. An issue or dispute concerning a material fact is deemed to be “genuine” if, in the estimation of a court or Presiding Officer, a jury or other fact-finder could reasonably find for the non-moving party. BWX Technologies, Inc., 2000 EPA App. LEXIS at *36; and Puerto Rico Aqueduct and Sewer Authority, 2000 EPA ALJ LEXIS at *6-7.

In opposing a motion for accelerated decision, “bare assertions, conclusory allegations or suspicions” are not sufficient to raise a genuine issue of material fact and defeat the motion. Spring Crest Fuel Co., Inc., 2000 EPA ALJ LEXIS at *13. *See also*, BWX Technologies, Inc., 2000 EPA App. LEXIS at *38, *citing* 11 JAMES W. MOORE ET AL., Moore’s Federal Practice § 56.13[1], [2] (3d ed. 1999). To avoid the summary judgment motion being granted, the nonmovant must provide “sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” In the Matter of: Vemco, Inc., d/b/a Venture Grand Rapids, 2003 EPA ALJ LEXIS 29, *6-7 (April 23, 2003), *citing* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). It is not sufficient if the non-moving party’s evidence is “merely colorable” or “not significantly probative.” Vemco, Inc., 2003 EPA ALJ LEXIS at *7, *again citing* Anderson, at 477 U.S. at 249-150. Summary disposition may not be avoided merely by alleging that a factual dispute may exist, or that future proceedings may turn something up. In re: Green Thumb Nursery, Inc., 6 E.A.D. 782 n. 23, 1997 EPA App. Lexis 4 (EAB 1997); Vemco, Inc., 2003 EPA ALJ LEXIS at *7.

Ultimately, if the evidence viewed in the light most favorable to the non-moving party is such that no reasonable decision-maker could find for the non-moving party, an order granting a motion for accelerated decision is appropriate. In re: BWX Technologies, Inc., 2000 EPA App. LEXIS at *36, *citing Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970).¹

IV. Factual Analysis - No Genuine Issue of Material Fact Exists in the Action at bar

Based upon the admissions made by the Respondent in the Answer and the other evidence referenced in this Brief, Complainant submits that no genuine issue exists concerning the following facts which are material to the outcome of this matter:

1. The 13 housing units in Lancaster, Pennsylvania, located at 230 E. Ross St., #1; 230 E. Ross St., #2; 237 E. Rock St.; 305 E. Filbert St., #2; 491 New Holland Ave., #2; 491 New Holland Ave., #3; 602 N. Marshall St., #1; 602 N. Marshall St., #4; 713 N. Duke St., #1; 713 N. Duke St., #2; 713 N. Duke St., #3; 713 N. Duke St., #4; and 721 N. Shippen St., #2, (hereinafter “Housing Units”), respectively, at all times relevant to the Complaint, consisted of real property on which there is situated one building used as the home or residence of one or more persons.

Evidence: December 31, 2007 Administrative Complaint and Notice of Opportunity (“Complaint”) at ¶¶ 18 and 19 and May 20, 2008 Answer (“Answer”) at ¶ 19 (“Admitted”).

¹ The EAB in BWX Technologies did note the following important distinction between a judge ruling upon a motion for summary judgment filed in a civil matter with a jury acting as the fact-finder and a Presiding Officer ruling upon a motion for accelerated decision in an administrative proceeding in which the Presiding Officer is the ultimate fact-finder (i.e., the equivalent of a bench trial):

“There is no jury in an administrative proceeding under 40 C.F.R. Part 22. The fact-finding function is performed by the administrative law judge in a manner akin to that of a district court judge who performs the fact-finding function in a bench trial. This latter point is noteworthy because it may be possible for the judge [or Presiding Officer], in appropriate circumstances, to resolve disputed issues of fact on cross-motions for summary judgment if it is clear that there is no further evidence to be developed. See Nunex v. Superior Oil Co., 572 F.2d 1119, 1123-24 (5th Cir. 1978).” BWX Technologies, 2000 EPA App. LEXIS at*37, n19.

2. At all times relevant to the Complaint, the Respondent was the was the “owner” and “lessor”, as those terms are defined in 40 C.F.R. § 745.103 of the Housing Units.

Evidence: Complaint at ¶ 18 and Answer at ¶ 18 (“Admitted that respondent is the owner of the referenced housing units.”).

3. Each building situated on the real property located at each of the Housing Units was housing constructed prior to 1978.

Evidence: Complaint at ¶ 20 and Answer at ¶ 20 (“Admitted”).

4. At all times relevant to the Complaint, the Housing Units consisted of housing that was not used as housing for the elderly or persons with disabilities, or as a 0-bedroom dwelling as defined by 40 C.F.R. § 745.103.

Evidence: Complaint at ¶ 21 and Answer at ¶ 21 (“Admitted”).

5. At all times relevant to the Complaint, the Housing Units, consisted of real property and contained one or more “residential dwellings(s)” and was “target housing” with the meaning of Section 1004(23) and (27) of the RLBPHRA, 42 U.S.C. § 4851b(23) and (27), Section 401(14) and (17) of TSCA, 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.

Evidence: Complaint at ¶ 22 and Answer at ¶ 22 (“Admitted”).

6. On or about June 27, 2005, Respondent entered into a written contract (“Lease Transaction #1”) with a lessee to rent/lease 230 E. Ross St., #1 for a term commencing on July 1, 2005 and terminating July 1, 2006.

Evidence: Complaint at ¶ 23 Answer at ¶ 23 (“Admitted”); CX Exhibit - 13.A. (Lease Transaction #1).

7. Lease Transaction #1 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or

extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 24 and Answer at ¶ 24 (“Admitted”); CX Exhibit - 13.A. (Lease Transaction #1).

8. Lease Transaction #1 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 25 and Answer at ¶ 25 (“Admitted”); CX Exhibit - 13.A. (Lease Transaction #1).

9. Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the lease of the target housing subject to Lease Transaction #1.

Evidence: Complaint at ¶ 75 and Answer at ¶ 75 (“...Respondent did not provide a “Lead Warning Statement” for Lease Transaction[] #1...”); CX Exhibit - 13.A. (Lease Transaction #1).
[This paragraph corresponds to Count 5 in the Complaint].

10. Respondent failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in such target housing, either as an attachment to, or within, [] the lease[] for the Target Housing subject to Lease Transaction[] #1, as required by 40 C.F.R. § 745.113(b)(2). Lease Transaction #1.

Evidence: Complaint at ¶ 78 and Answer at ¶ 78 (“Denied...Respondent did not provide a statement disclosing the presence of known lead-based paint...Respondent did not have any

knowledge regarding lead based paint or lead based paint hazards in the referenced units...”); CX Exhibit - 13.A. (Lease Transaction #1).

[This paragraph corresponds to Count 10 in the Complaint].

11. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“...the Lease for Transaction #1 does not appear to include a statement by a lessee affirming receipt of lead hazard information pamphlet...”); CX Exhibit - 13.A. (Lease Transaction #1).

[This paragraph corresponds to Count 15 in the Complaint].

12. On or about August 13, 2005, Respondent entered into a written contract (“Lease Transaction #2”) with a lessee to rent/lease 230 E. Ross St., #2 for a term commencing on August 13, 2005 and terminating September 1, 2006.

Evidence: Complaint at ¶ 26 and CX Exhibit - 13.B. (Lease Transaction #2).

13. Lease Transaction #2 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 27 and CX Exhibit - 13.B. (Lease Transaction #2).

14. Lease Transaction #2 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 28 and CX Exhibit - 13.B. (Lease Transaction #2).

15. Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the lease of the target housing subject to Lease Transaction #2.

Evidence: Complaint at ¶ 75 and Answer at ¶ 75 (“Respondent is unable to locate a copy of Lease Transaction #2, therefore Respondent is unable to admit or deny the allegations...”)²; CX Exhibit - 13.B. (Lease Transaction #2).

[This paragraph corresponds to Count 6 in the Complaint].

16. Respondent failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in such target housing, either as an attachment to, or within, [] the lease [] for the Target Housing subject to Lease Transaction [] #2, as required by 40 C.F.R. § 745.113(b)(2).

Evidence: Complaint at ¶ 78 and Answer at ¶ 78 (“Denied...Respondent did not provide a statement disclosing the presence of known lead-based paint...Respondent did not have any knowledge regarding lead based paint or lead based paint hazards in the referenced units...”); CX Exhibit - 13.B. (Lease Transaction #2).

[This paragraph corresponds to Count 11 in the Complaint].

17. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the

² The document relied upon by Complainant (Lease transaction #2/CX Exhibit 13.B.) was provided to Complainant by Respondent in response to an information request prior to the filing of the Complaint. This document was provided back to Respondent via Complainant’s Prehearing Exchange.

leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required.”); CX Exhibit - 13.B. (Lease Transaction #2).

[This paragraph corresponds to Count 16 in the Complaint].

18. On or about April 27, 2006, Respondent entered into a written contract (“Lease Transaction #3”) with a lessee to rent/lease 237 E. Rock St. for a term commencing on May 1, 2006 and terminating May 1, 2007.

Evidence: Complaint at ¶ 29 Answer at ¶ 29 (“Admitted”); CX Exhibit - 13.C. (Lease Transaction #3).

19. Lease Transaction #3 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 30 and Answer at ¶ 30 (“Admitted”); CX Exhibit - 13.C. (Lease Transaction #3).

20. Lease Transaction #3 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 31 and Answer at ¶ 31 (“Admitted”); CX Exhibit - 13.C. (Lease Transaction #3).

21. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the

leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required.”); CX Exhibit - 13.C. (Lease Transaction #3).

[This paragraph corresponds to Count 17 in the Complaint].

22. On or about February 3, 2006, Respondent entered into a written contract (“Lease Transaction #4”) with a lessee to rent/lease 305 Filbert St., #2 for a term commencing on February 3, 2006 and terminating February 1, 2007.

Evidence: Complaint at ¶ 32 Answer at ¶ 32 (“Admitted”); CX Exhibit - 13.D. (Lease Transaction #4).

23. Lease Transaction #4 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 33 and Answer at ¶ 33 (“Admitted”); CX Exhibit - 13.D. (Lease Transaction #4).

24. Lease Transaction #4 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 34 and Answer at ¶ 34 (“Admitted”); CX Exhibit - 13.D. (Lease Transaction #4).

25. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the

leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required.”); CX Exhibit - 13.D. (Lease Transaction #4).

[This paragraph corresponds to Count 18 in the Complaint].

26. On or about February 23, 2006, Respondent entered into a written contract (“Lease Transaction #5”) with a lessee to rent/lease 491 New Holland Ave., #2 for a term commencing on March 1, 2006 and terminating March 1, 2007.

Evidence: Complaint at ¶ 35 Answer at ¶ 35 (“Admitted”); CX Exhibit - 13.E. (Lease Transaction #5).

27. Lease Transaction #5 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 36 and Answer at ¶ 36 (“Admitted”); CX Exhibit - 13.E. (Lease Transaction #5).

28. Lease Transaction #5 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 37 and Answer at ¶ 37 (“Admitted”); CX Exhibit - 13.E. (Lease Transaction #5).

29. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the

leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required.”); CX Exhibit - 13.E. (Lease Transaction #5).

[This paragraph corresponds to Count 19 in the Complaint].

30. On or about August 4, 2003, Respondent entered into a written contract (“Lease Transaction #6”) with a lessee to rent/lease 491 New Holland Ave., #3 for a term commencing on August 4, 2003 and terminating August 1, 2004.

Evidence: Complaint at ¶ 38 Answer at ¶ 38 (“Admitted”); CX Exhibit - 13.F. (Lease Transaction #6).

31. Lease Transaction #6 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 39 and Answer at ¶ 39 (“Admitted”); CX Exhibit - 13.F. (Lease Transaction #6).

32. Lease Transaction #6 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 40 and Answer at ¶ 40 (“Admitted”); CX Exhibit - 13.F. (Lease Transaction #6).

33. Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the lease of the

target housing subject to Lease Transaction #6.

Evidence: Complaint at ¶ 75 and Answer at ¶ 75 (“...Respondent did not provide a “Lead Warning Statement” for Lease Transaction[]... #6...”); CX Exhibit - 13.F. (Lease Transaction #6).

[This paragraph corresponds to Count 7 in the Complaint].

34. Respondent failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in such target housing, either as an attachment to, or within, [] the lease[] for the Target Housing subject to Lease Transaction[] #2, as required by 40 C.F.R. § 745.113(b)(2).

Evidence: Complaint at ¶ 78 and Answer at ¶ 78 (“Denied...Respondent did not provide a statement disclosing the presence of known lead-based paint...Respondent did not have any knowledge regarding lead based paint or lead based paint hazards in the referenced units...”); CX Exhibit - 13.F. (Lease Transaction #6).

[This paragraph corresponds to Count 12 in the Complaint].

35. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required.”); CX Exhibit - 13.F. (Lease Transaction #6).

[This paragraph corresponds to Count 20 in the Complaint].

36. On or about September 1, 2006, Respondent entered into a written contract (“Lease Transaction

#7”) with a lessee to rent/lease 602 N. Marshall St., #1 for a term commencing on September 1, 2006 and terminating September 1, 2007.

Evidence: Complaint at ¶ 41 Answer at ¶ 41 (“Admitted”); CX Exhibit - 13.G. (Lease Transaction #7).

37. Lease Transaction #7 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 42 and Answer at ¶ 42 (“Admitted”); CX Exhibit - 13.G. (Lease Transaction #7).

38. Lease Transaction #7 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 43 and Answer at ¶ 43 (“Admitted”); CX Exhibit - 13.G. (Lease Transaction #7).

39. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required...however Lease Transaction[] #7 do in fact contain a reference regarding the receipt of lead hazard information pamphlet. Lease Transaction[] #7 [] contain[s] reference to tenant having received a lead hazard information pamphlet entitled, “Protect Your Family From Lead in Your Home.” The form of the lease incorrectly directs the tenant to initial

one of the three statements, rather than each statement that applies....rather than direct the tenant to initial one of these three options, tenant should have been directed to check each that apply...”); CX Exhibit - 13.G. (Lease Transaction #7).

[This paragraph corresponds to Count 21 in the Complaint].

40. On or about August 10, 2006, Respondent entered into a written contract (“Lease Transaction #8”) with a lessee to rent/lease 602 N. Marshall St., #4 for a term commencing on August 10, 2006 for a term of 12 months.

Evidence: Complaint at ¶ 44 Answer at ¶ 44 (“Denied. Respondent is unable to locate a copy of the referenced lease agreement, therefore strict proof thereof is demanded.”)³; CX Exhibit - 13.H. (Lease Transaction #8).

41. Lease Transaction #8 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 45 and Answer at ¶ 45 (“Denied. Respondent is unable to locate a copy of the referenced lease agreement, therefore strict proof thereof is demanded.”); CX Exhibit - 13.H. (Lease Transaction #8).

42. Lease Transaction #8 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 46 and Answer at ¶ 46 (“Denied. Respondent is unable to locate a

³ The document relied upon by Complainant (Lease transaction #8/CX Exhibit 13.H.) was provided to Complainant by Respondent in response to an information request prior to the filing of the Complaint. This document was provided back to Respondent via Complainant’s Prehearing Exchange.

copy of the referenced lease agreement, therefore strict proof thereof is demanded.”); CX Exhibit - 13.H. (Lease Transaction #8).

43. Respondent failed to include, as an attachment to or within the lease for the Target Housing, the signatures of the lessor and lessee (referred to hereinafter as the “Required Signatures”), certifying to the accuracy of their statements, to the best of their knowledge (also referred to as the “Required Certifications”), along with the dates of signature in the lease for the Target Housing subject to Lease Transaction #8, as required by 40 C.F.R. § 745.113(b)(6).

Evidence: Complaint at ¶ 84 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required...Respondent is unable to locate a copy of Lease Transaction #8, however, given the referenced date for that lease, Respondent does believe that the required signatures of lessor and lessee certifying the required certifications, were in fact provide [sic] in the referenced lease transaction.”)⁴; and CX Exhibit - 13.H. (Lease Transaction #8).

[This paragraph corresponds to Count 26 in the Complaint].

44. On or about March 1, 2006, Respondent entered into a written contract (“Lease Transaction #9”) with a lessee to rent/lease 713 N. Duke St., #1 for a term commencing on March 1, 2006 and terminating March 1, 2007.

Evidence: Complaint at ¶ 47 Answer at ¶ 47 (“Admitted”); CX Exhibit - 13.I. (Lease Transaction #9).

45. Lease Transaction #9 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

⁴ The document relied upon by Complainant (Lease transaction #8/CX Exhibit 13.H.) was provided to Complainant by Respondent in response to an information request prior to the filing of the Complaint. This document was provided back to Respondent via Complainant’s Prehearing Exchange. All the lines where the lessor should sign are blank.

Evidence: Complaint at ¶ 48 and Answer at ¶ 48 (“Admitted”); CX Exhibit - 13.I. (Lease Transaction #9).

46. Lease Transaction #9 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 49 and Answer at ¶ 49 (“Admitted”); CX Exhibit - 13.I. (Lease Transaction #9).

47. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required...however Lease Transaction[] #9 do[es] in fact contain a reference regarding the receipt of lead hazard information pamphlet. Lease Transaction[] #9 [] contain[s] reference to tenant having received a lead hazard information pamphlet entitled, “Protect Your Family From Lead in Your Home.” The form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies....rather than direct the tenant to initial one of these three options, tenant should have been directed to check each that apply...”); CX Exhibit - 13.I. (Lease Transaction #9).

[This paragraph corresponds to Count 22 in the Complaint].

48. On or about October 10, 2005, Respondent entered into a written contract (“Lease Transaction #10”) with a lessee to rent/lease 713 N. Duke St., #2 for a term of 12 ½ months, commencing on

October 10, 2005.

Evidence: Complaint at ¶ 50 Answer at ¶ 50 (“Admitted”); CX Exhibit - 13.J. (Lease Transaction #10).

49. Lease Transaction #10 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 51 and Answer at ¶ 51 (“Admitted”); CX Exhibit - 13.J. (Lease Transaction #10).

50. Lease Transaction #10 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 52 and Answer at ¶ 52 (“Admitted”); CX Exhibit - 13.J. (Lease Transaction #10).

51. Respondent did not provide to the lessees in Lease Transactions #10 [] an EPA-approved lead pamphlet or equivalent pamphlet prior to the lessees being obligated under contract to lease the Target Housing as required by 40 C.F.R. § 745.107(a)(1).

Evidence: Complaint at ¶ 66 and Answer at ¶ 66 (“Denied...Respondent did not provide the lessees with a copy of the EPA lead pamphlet or equivalent pamphlet pursuant to Lease Transaction[] #10...Respondent received a Clearance Examination Report for 713 North Duke Street, Apartment #2, dated October 12, 2005...Pursuant to 40 C.F.R. § 745.101(b), leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal Certification program or under federally accredited state or travel certification program are excluded under the requirements of sub part F...Respondent respectfully submits that the

referenced lease transaction is not subject to the requirements of Subpart F, including 40 C.F.R. § 745.107(a)(1).”); CX Exhibit - 13.J. (Lease Transaction #10); and CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

[This paragraph corresponds to Count 1 in the Complaint].

52. At no time before any lessee of the target housing which is the subject of Lease Transaction #10 became obligated to rent and/or lease such target housing did the Respondent or any other lessor of the target housing disclose to any such lessee the presence of known lead-based paint and/or lead-based paint hazards in the target housing or provide to any such lessee information that was then available to the Respondent concerning known lead-based paint in the target housing, such as the basis for the determination that lead-based paint existed therein, the location of the lead-based paint within the target housing or the condition of the painted surfaces within the respective target housing, as required by 40 C.F.R. § 745.107(a)(2).

Evidence: Complaint at ¶ 69 and Answer at ¶ 69 (“Denied...as noted in Respondent’s responses to [Counts 1-2], Respondent received the Clearance Examination Report dated October 12, 2005 which pursuant to 40 C.F.R. § 745.101(b), exempts Lease Transaction #10 from the requirements of sub part F, including 40 C.F.R. § 745.107(a)(2)”; CX Exhibit - 13.J. (Lease Transaction #10); and CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

[This paragraph corresponds to Count 3 in the Complaint].

53. At no time before any lessee of the target housing which is the subject of Lease Transaction #10 became obligated to rent and/or lease such target housing did the Respondent or any other lessor of the target housing provide to any such lessee those records and/or reports pertaining to lead-based

paint in the target housing that were available to the lessor in violation of 40 C.F.R.

§ 745.107(a)(4).

Evidence: Complaint at ¶ 72 and Answer at ¶ 72 (“Admitted in part and denied in part. Admitted that Respondent did not provide to lessee, records and/or reports pertaining to lead based paint in the unit, as such information is available to the lessor. Denied that Respondent was obligated to provide such records and/or reports. As Respondent received the Clearance Examination Report dated October 12, 2005 in indicating that the referenced unit at 713 North Duke Street, Apartment #2 was lead base paint free and as such was exempt from the requirements of sub part F.”); CX Exhibit - 13.J. (Lease Transaction #10); and CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

[This paragraph corresponds to Count 4 in the Complaint].

54. Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the lease of the target housing subject to Lease Transaction #10.

Evidence: Complaint at ¶ 75 and Answer at ¶ 75 (“Respondent was not obligated to provide a “Lead Warning Statement” for Lease Transaction #10 as the subject premises had been certified lead base paint free by an appropriately certified inspector on October 12, 2005.”); CX Exhibit - 13.J. (Lease Transaction #10); and CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

[This paragraph corresponds to Count 8 in the Complaint].

55. Respondent failed to include a statement disclosing the presence of known lead-based paint and/or

lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in such target housing, either as an attachment to, or within, [] the lease[] for the Target Housing subject to Lease Transaction[] #10, as required by 40 C.F.R. § 745.113(b)(2).

Evidence: Complaint at ¶ 78 and Answer at ¶ 78 (“Denied...Respondent did not provide a statement disclosing the presence of known lead-based paint...Respondent did not have any knowledge regarding lead based paint or lead based paint hazards in the referenced units. With respect to Lease Transaction #10, the referenced unit had been certified as lead-based paint free on October 12, 2005 and is therefore exempt from the requirements...”); CX Exhibit - 13.J. (Lease Transaction #10); and CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

[This paragraph corresponds to Count 13 in the Complaint].

56. On or about July 7, 2004, Respondent entered into a written contract (“Lease Transaction #11”) with a lessee to rent/lease 713 N. Duke St., #2 for a term commencing on August 1, 2004 and terminating August 1, 2005.

Evidence: Complaint at ¶ 53 Answer at ¶ 53 (“Admitted”); CX Exhibit - 13.K. (Lease Transaction #11).

57. Lease Transaction #11 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 54 and Answer at ¶ 54 (“Admitted”); CX Exhibit - 13.K. (Lease Transaction #11).

58. Lease Transaction #11 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has

previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 55 and Answer at ¶ 55 (“Admitted”); CX Exhibit - 13.K. (Lease Transaction #11).

59. Respondent did not provide to the lessees in Lease Transactions #11 [] an EPA-approved lead pamphlet or equivalent pamphlet prior to the lessees being obligated under contract to lease the Target Housing as required by 40 C.F.R. § 745.107(a)(1).

Evidence: Complaint at ¶ 66 and Answer at ¶ 66 (“Denied...Respondent did not provide the lessees with a copy of the EPA lead pamphlet or equivalent pamphlet pursuant to Lease Transaction[] #11.”); CX Exhibit - 13.K. (Lease Transaction #11).

[This paragraph corresponds to Count 2 in the Complaint].

60. Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the lease of the target housing subject to Lease Transaction #11.

Evidence: Complaint at ¶ 75 and Answer at ¶ 75 (“...Respondent did not provide a “Lead Warning Statement” for Lease Transaction[] #11...”); CX Exhibit - 13.K. (Lease Transaction #11).

[This paragraph corresponds to Count 9 in the Complaint].

61. Respondent failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in such target housing, either as an attachment to, or within, [] the lease[] for the Target Housing subject to Lease Transaction[] #11, as required by 40 C.F.R. § 745.113(b)(2).

Evidence: Complaint at ¶ 78 and Answer at ¶ 78 (“Denied...Respondent did not provide a statement disclosing the presence of known lead-based paint...Respondent did not have any knowledge regarding lead based paint or lead based paint hazards in the referenced units...”); CX Exhibit - 13.K. (Lease Transaction #11).

[This paragraph corresponds to Count 14 in the Complaint].

62. On or about February 15, 2006, Respondent entered into a written contract (“Lease Transaction #12”) with a lessee to rent/lease 713 N. Duke St., #3 for a term commencing on February 15, 2006 and terminating March 1, 2007.

Evidence: Complaint at ¶ 56 Answer at ¶ 56 (“Admitted”); CX Exhibit - 13.L. (Lease Transaction #12).

63. Lease Transaction #12 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 57 and Answer at ¶ 57 (“Admitted”); CX Exhibit - 13.L. (Lease Transaction #12).

64. Lease Transaction #12 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 58 and Answer at ¶ 58 (“Admitted”); CX Exhibit - 13.L. (Lease Transaction #12).

65. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required

by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required...however Lease Transaction[] #12 do in fact contain a reference regarding the receipt of lead hazard information pamphlet. Lease Transaction[] #12 [] contain[s] reference to tenant having received a lead hazard information pamphlet entitled, “Protect Your Family From Lead in Your Home.” The form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies....rather than direct the tenant to initial one of these three options, tenant should have been directed to check each that apply...”); CX Exhibit - 13.L. (Lease Transaction #12).

[This paragraph corresponds to Count 23 in the Complaint].

66. On or about December 26, 2005, Respondent entered into a written contract (“Lease Transaction #13”) with a lessee to rent/lease 713 N. Duke St., #4 for a term commencing on December 26, 2005 and terminating January 1, 2007.

Evidence: Complaint at ¶ 59 Answer at ¶ 59 (“Admitted”); CX Exhibit - 13.M. (Lease Transaction #13).

67. Lease Transaction #13 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 60 and Answer at ¶ 60 (“Admitted”); CX Exhibit - 13.M. (Lease Transaction #13).

68. Lease Transaction #13 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 61 and Answer at ¶ 61 (“Admitted”); CX Exhibit - 13.M. (Lease Transaction #13).

69. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required...however Lease Transaction[] #13 do in fact contain a reference regarding the receipt of lead hazard information pamphlet. Lease Transaction[] #13 [] contain[s] reference to tenant having received a lead hazard information pamphlet entitled, “Protect Your Family From Lead in Your Home.” The form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies....rather than direct the tenant to initial one of these three options, tenant should have been directed to check each that apply...”); CX Exhibit - 13.M. (Lease Transaction #13).

[This paragraph corresponds to Count 24 in the Complaint].

70. On or about January 9, 2006, Respondent entered into a written contract (“Lease Transaction #14”) with a lessee to rent/lease 721 N. Shippen St., #2 for a term commencing on February 1, 2006 and terminating February 1, 2007.

Evidence: Complaint at ¶ 62 Answer at ¶ 62 (“Denied. Respondent is unable to locate a copy of the referenced lease agreement, therefore strict proof thereof is demanded.”)⁵; CX Exhibit - 13.N.

⁵ The document relied upon by Complainant (Lease transaction #14/CX Exhibit 13.N.) was provided to Complainant by Respondent in response to an information request prior to the filing of the Complaint. This document was provided back to Respondent via Complainant’s Prehearing Exchange.

(Lease Transaction #14).

71. Lease Transaction #14 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

Evidence: Complaint at ¶ 63 and Answer at ¶ 63 (“Denied. Respondent is unable to locate a copy of the referenced lease agreement, therefore strict proof thereof is demanded.”); CX Exhibit - 13.N. (Lease Transaction #14).

72. Lease Transaction #14 was not a “[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

Evidence: Complaint at ¶ 64 and Answer at ¶ 64 (“Denied. Respondent is unable to locate a copy of the referenced lease agreement, therefore strict proof thereof is demanded.”); CX Exhibit - 13.N. (Lease Transaction #14).

73. Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #1 - #7, #9, and #12 - #14, as required by 40 C.F.R. § 745.113(b)(4).

Evidence: Complaint at ¶ 81 and Answer at ¶ 81 (“Denied as a conclusion of law to which no further response is required...With respect to Lease Transaction #14, Respondent is unable to locate a copy of the Lease, however, given the date of the Lease and the form used by Respondent at the time that lease was to have been executed, January 9, 2006, Respondent believes that the tenant was properly provided with the appropriate lead hazard information pamphlet and that the

lease form would properly have reflected tenant's receipt of the same")⁶; CX Exhibit - 13.N.
(Lease Transaction #14).

[This paragraph corresponds to Count 25 in the Complaint].

V. Legal Analysis - Complainant is Entitled to Judgment as a Matter of Law Under Counts 1 - 26 of the Complaint

A. Respondent was required to comply with the Disclosure Rule in connection with the leasing of the Target Housing

The RLBPHRA and the Disclosure Rule, 40 C.F.R. Part 745, Subpart F, require that lessors, in connection with the leasing of certain types of residential dwellings constructed before 1978, otherwise known as "target housing", must make specific disclosures concerning the risks generally posed by lead-based paint/hazards, and the availability or lack of availability of information and records concerning the presence of lead-based paint/hazards in the target housing being leased.

- 1. The residential dwellings located at 230 E. Ross St., #1, 230 E. Ross St., #2, 237 E. Rock St., 305 E. Filbert St., #2, 491 New Holland Ave., #2, 491 New Holland Ave., #3, 602 N. Marshall St., #1, 602 N. Marshall St., #4, 713 N. Duke St., #1, 713 N. Duke St., #2, 713 N. Duke St., #3, 713 N. Duke St., #4, and 721 N. Shippen St., #2, Lancaster, Pennsylvania qualify as "Target Housing"**

"Target housing" is defined by RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, 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."

Respondent admitted in the Answer to the Complaint that each building situated on the real property located at 230 E. Ross St., #1, 230 E. Ross St., #2, 237 E. Rock St., 305 E. Filbert St., #2, 491

⁶ The document relied upon by Complainant (Lease transaction #14/CX Exhibit 13.N.) was provided to Complainant by Respondent in response to an information request prior to the filing of the Complaint. This document was provided back to Respondent via Complainant's Prehearing Exchange. None of the three lines provided for the Tenant to initial are initialed.

New Holland Ave., #2, 491 New Holland Ave., #3, 602 N. Marshall St., #1, 602 N. Marshall St., #4, 713 N. Duke St., #1, 713 N. Duke St., #2, 713 N. Duke St., #3, 713 N. Duke St., #4, and 721 N. Shippen St., #2, Lancaster, Pennsylvania, (“Properties”) at all times relevant to the violations alleged [in the Complaint], consisted of real property on which there was situated one building used as the home or residence for one or more persons⁷ and consisted of housing that was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as provided by 40 C.F.R. § 745.103.⁸ Additionally, Respondent admitted in the Answer that the buildings located at the Properties was housing constructed prior to 1978.⁹

Therefore, no genuine issue of material fact exists and it is clear as a matter of law that, at all times relevant to the Complaint, 230 E. Ross St., #1, 230 E. Ross St., #2, 237 E. Rock St., 305 E. Filbert St., #2, 491 New Holland Ave., #2, 491 New Holland Ave., #3, 602 N. Marshall St., #1, 602 N. Marshall St., #4, 713 N. Duke St., #1, 713 N. Duke St., #2, 713 N. Duke St., #3, 713 N. Duke St., #4, and 721 N. Shippen St., #2, Lancaster, Pennsylvania qualified as “target housing” as that term is defined by RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

2. Respondent was the “owner” and “lessor” of Target Housing

With regard to the leasing of “target housing”, the Disclosure Rule places the legal obligation to make certain types of disclosures concerning lead-based paint/hazards upon the lessor. The term “lessor” is defined by 40 C.F.R. § 745.103 to mean, “any entity that offers target housing for lease, rent or sublease, including, but not limited to individuals, partnerships, corporations, trusts, government agencies,

⁷ Complaint at ¶ 19 and Answer at ¶ 19 (“Admitted.”).

⁸ Complaint at ¶ 21 and Answer at ¶ 21 (“Admitted.”).

⁹ Complaint at ¶ 20 and Answer at ¶ 20 (“Admitted.”).

housing agencies, Indian Tribes, and nonprofit organizations.”

Respondent admitted in the Answer and the evidence at bar establishes that, at all times relevant to the Complaint, Respondent was the “owner” and “lessor”, as those terms are defined in 40 C.F.R. § 745.103, of housing units located at the Properties.¹⁰

Therefore, no genuine issue of material fact exists and it is clear as a matter of law that, at all times relevant to the Complaint, Respondent was the “lessor” of Target Housing at the Properties as defined by 40 C.F.R. § 745.103.

As the lessor of target housing, Respondent, was required to comply with the Disclosure Rule.

B. Respondent failed to comply with the Disclosure Rule regarding the leasing of the target housing

1. Counts 1-2 - Respondent violated 40 C.F.R. § 745.107(a)(1) in connection with the leasing of the target housing

40 C.F.R. § 745.107(a)(1) provides, in relevant part:

(a) The following activities shall be completed before the lessor is obligated under any contract to lease target housing.

(1) The lessor shall provide the lessee with an EPA-approved lead hazard information pamphlet prior to the lessee being obligated under contract to lease the target housing. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet that has been approved for use in that State by EPA.

It is clear that no genuine issue of material fact exists and that, as a matter of law, Respondent violated 40 C.F.R. § 745.113(a)(1) as alleged in Counts 1 and 2 of the Complaint.

a. Count 1 (Lease Transaction #10)

As previously established, Respondent, offered the target housing at 713 N. Duke St., #2 in

¹⁰ Complaint at ¶ 18 and Answer at ¶ 18 (“Admitted that respondent is the owner of the referenced housing units. ...”); CX Exhibits - 13.A. - N. (Lease Transactions #1 - #14, respectively, identifying Respondent as Landlord.)

Lancaster, Pennsylvania for lease and, on or about October 10, 2005, entered into a written lease (Lease Transaction #10) for a term commencing on October 10, 2005 and terminating twelve and one half months later, (on or about November 1, 2006).¹¹ Lease Transaction #10 does not indicate that the lessor provided lessee with an EPA-approved lead hazard information pamphlet, including, the EPA document entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet prior to the lessee being obligated under the contract to lease the target housing and Respondent admitted as such in the Answer.¹²

Relying ONLY on the first page of the Lead Clearance Examination Report,¹³ Respondent argues that the property related to Lease Transaction #10 is “lead-based paint free”¹⁴ and is not subject to the requirements of subpart F, including 40 C.F.R. § 745.107(a)(1).¹⁵ However, Respondent’s argument is grounded on a highly selective reading of said document. Page two of the document reveals that, in fact, this exception does not apply. In bold print on page two of the document the following statement is found: **“Please be advised that Lead is still present in this property.”** Respondent was clearly on notice that the property was NOT lead-based paint and/or lead-based hazard free at the time relevant to the execution of the lease and therefore was NOT exempt from complying with 40 C.F.R. § 745.107(a)(1).

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.107(a)(1) in connection with Lease Transaction #10.

b. Count 2 (Lease Transaction #11)

¹¹ Complaint at ¶ 50 Answer at ¶ 50 (“Admitted”); CX Exhibit - 13.J. (Lease Transaction #10).

¹² Complaint at ¶ 66 Answer at ¶ 66 (“Respondent did not provide the lessee[] with a copy of the EPA lead pamphlet or equivalent pamphlet pursuant to Lease Transaction[] #10...”); CX Exhibit - 13.J. (Lease Transaction #10).

¹³ CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

¹⁴ Answer at ¶ 66.

¹⁵ Id.

As previously established, Respondent, offered the target housing at 713 N. Duke St., #2 in Lancaster, Pennsylvania for lease and, on or about July 7, 2004, entered into a written lease (Lease Transaction #11) for a term commencing on August 1, 2004 and terminating on August 1, 2005.¹⁶ Lease Transaction #11 does not indicate that the lessor provided lessee with an EPA-approved lead hazard information pamphlet, including, the EPA document entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet prior to the lessee being obligated under the contract to lease the target housing and Respondent admitted as such in the Answer.¹⁷

Relying ONLY on the first page of the Lead Clearance Examination Report,¹⁸ Respondent argues that the property related to Lease Transaction #11 is “lead-based paint free”¹⁹ and is not subject to the requirements of subpart F, including 40 C.F.R. § 745.107(a)(1).²⁰ However, Respondent’s argument is grounded on a highly selective reading of said document. Page two of the document reveals that, in fact, this exception does not apply. In bold print on page two of the document the following statement is found: **“Please be advised that Lead is still present in this property.”** Respondent was clearly on notice that the property was NOT lead-based paint and/or lead-based hazard free at the time relevant to the execution of the lease and therefore was NOT exempt from complying with 40 C.F.R. § 745.107(a)(1).

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.107(a)(1) in connection with Lease Transaction #11.

¹⁶ Complaint at ¶ 53 Answer at ¶ 53 (“Admitted”); CX Exhibit - 13.K. (Lease Transaction #11).

¹⁷ Complaint at ¶ 66 Answer at ¶ 66 (“Respondent did not provide the lessee[] with a copy of the EPA lead pamphlet or equivalent pamphlet pursuant to Lease Transaction[]... #11...”); CX Exhibit - 13.K. (Lease Transaction #11).

¹⁸ CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (**“Please be advised that Lead is still present in this property”**) (bold in original) at p. 2.

¹⁹ Answer at ¶ 66.

²⁰ Id.

2. Count 3 - Respondent violated 40 C.F.R. § 745.107(a)(2) in connection with the leasing of the target housing (Lease Transaction #10)

40 C.F.R. § 745.107(a)(2) provides, in relevant part:

(a) The following activities shall be completed before the lessor is obligated under any contract to lease target housing.

(2) The lessor shall disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

As previously established, Respondent, offered the target housing at 713 N. Duke St., #2 in Lancaster, Pennsylvania for lease and, on or about October 10, 2005, entered into a written lease (Lease Transaction #10) for a term commencing on October 10, 2005 and terminating twelve and one half months later, (on or about November 1, 2006).²¹ At no time before the lessee of the target housing which is the subject of Lease Transaction #10 became obligated to rent and/or lease such target housing did the Respondent or disclose to any such lessee the presence of known lead-based paint and/or lead-based paint hazards in the target housing or provide to any such lessee information that was then available to the Respondent concerning known lead-based paint in the target housing, such as the basis for the determination that lead-based paint existed therein, the location of the lead-based paint within the target housing or the condition of the painted surfaces within the respective target housing, as required by 40 C.F.R. § 745.107(a)(2).²² Lease Transaction #10 has no disclosure section as part of or attached to the

²¹ Complaint at ¶ 50 Answer at ¶ 50 (“Admitted”); CX Exhibit - 13.J. (Lease Transaction #10).

²² Complaint at ¶ 69 Answer at ¶ 69 (“Denied...Respondent received the Clearance Examination Report...which exempts Lease Transaction #10 from the requirements. ...”); CX Exhibit - 13.J. (Lease Transaction #10).

lease.²³ Furthermore, as noted, *supra*, Respondent's reliance on the Clearance Examination Report is misplaced.²⁴ Lastly, Respondent was on notice that there a lead hazard did exist at the property subject to Lease Transaction #10 because he was informed as such prior to executing Lease Transaction #10 via a September 29, 2005 letter to Respondent from the City of Lancaster.²⁵

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.107(a)(2) in connection with Lease Transaction #10.

3. Count 4 - Respondent violated 40 C.F.R. § 745.107(a)(4) in connection with the leasing of the target housing (Lease Transaction #10)

40 C.F.R. § 745.107(a)(4) provides in relevant part:

(a) The following activities shall be completed before the purchaser or lessor is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 745.101. . . .

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and /or lead-based paint hazards in the target housing as a whole.

In Count 4, Respondent violated 40 C.F.R. § 745.107(a)(4) with regard to Lease #10. As previously established, Respondent, offered the target housing at 713 N. Duke St., #2 in Lancaster, Pennsylvania for lease and, on or about October 10, 2005, entered into a written lease (Lease Transaction #10) for a term commencing on October 10, 2005 and terminating twelve and one half months later, (on or

²³ CX Exhibit - 13.J. (Lease Transaction #10).

²⁴ CX Exhibit - 2.I. (October 12, 2005 "Clearance Examination Report for 713 N. Duke St., #2") ("**Please be advised that Lead is still present in this property**") (bold in original) at p. 2.

²⁵ CX Exhibit - 2.I. (September 29, 2005 letter Re: 713 N. Duke Street, Apt. #2) (7th page of CX - 2.I.) "Based on Lead dust wipe sampling sent to the laboratory, the data indicates the above referenced property is **NOT CONSIDERED SAFE FOR HABITATION AT THIS TIME.**" (emphasis in original).

about November 1, 2006).²⁶

At no time before any lessee of the target housing which is the subject of Lease Transaction #10 became obligated to rent and/or lease such target housing did the Respondent provide to any such lessee those records and/or reports pertaining to lead-based paint in the target housing that were available to the lessor.²⁷ Respondent admitted as such in the Answer while relying again, on the Clearance Examination Report, as discussed, *supra*.²⁸

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.107(a)(4) in connection with Lease Transaction #10.

4. Count 5 - 9 - Respondent violated 40 C.F.R. § 745.113(b)(1) in connection with the leasing of the target housing

40 C.F.R. § 745.113(b)(1) provides in relevant part:

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract,

(1) A Lead Warning Statement with the following language: “Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”

It is clear that no genuine issue of material fact exists and that, as a matter of law, Respondent

²⁶ Complaint at ¶ 50 Answer at ¶ 50 (“Admitted”); CX Exhibit - 13.J. (Lease Transaction #10).

²⁷ Complaint at ¶ 72 and CX Exhibit - 13.J. (Lease Transaction #10).

²⁸ Answer at ¶ 72 (“Admitted in part and denied in part. Admitted that Respondent did not provide to lessee, records and/or reports pertaining to lead based paint in the unit, as such information is available to the lessor. Denied that Respondent was obligated to provide such records and/or reports. As Respondent received the Clearance Examination Report dated October 12, 2005 in indicating that the referenced unit at 713 North Duke Street, Apartment #2 was lead base paint free and as such was exempt from the requirements of sub part F.”) and CX Exhibit - 2.J. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

violated 40 C.F.R. § 745.113(b)(1) as alleged in Counts 5 - 9 in the Complaint.

a. Counts 5, 7 and 9 (Lease Transactions #1, #6, and #11 respectively)

As previously established, Respondent, executed leases of the target housing related to Lease Transactions #1, #6 and #9.²⁹

Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the leases for any of the target housing subject to Lease Transactions #1, #6, and #11 and admitted as such.³⁰

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(1) in connection Counts 5, 7, and 9 with regard to Lease Transactions #1, #6, and #11, respectively.

b. Count 6 (Lease Transaction #2)

As previously established, Respondent, executed a lease of the target housing related to Lease Transaction #2.³¹

Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the lease for the target housing subject to Lease Transaction #2.³² In the Answer, Respondent neither admits nor denies this allegation with regard to Lease Transaction #2 because, “Respondent is unable to locate a copy of Lease

²⁹ See pages 6-8, 12-14 and 22-23, *supra*.

³⁰ Complaint at ¶ 75 Answer at ¶ 75 (“...Respondent did not provide a “Lead Warning Statement” for Lease Transactions #1, #6 and #11. ...”); CX Exhibits - 13.A., F., and K. (Lease Transactions #1, #6, and #11, respectively).

³¹ See pages 8-9, *supra*.

³² Complaint at ¶ 75; CX Exhibit - 13.B. (Lease Transactions #2).

Transaction #2...and therefore strict proof thereof is demanded.”³³ This lease is one of several that Respondent provided to Complainant during the course of the investigation, which, at the time the Answer was drafted, Respondent claimed not to have.³⁴ Lease Transaction #2 is materially similar to Lease Transactions #1, #6, and #11 with respect to 40 C.F.R. § 745.113(b)(1) and its lack of a “Lead Warning Statement.”³⁵

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(1) in connection Count 6 with regard to Lease Transaction #2.

c. Count 8 (Lease Transaction #10)

As previously established, Respondent, executed a lease of the target housing related to Lease Transaction #10.³⁶

Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, the lease for the target housing subject to Lease Transaction #10.³⁷ In the Answer, with regard to Lease Transaction #10, Respondent denies this allegation claiming Respondent was not obligated to provide the “Lead Warning Statement” and relies on the October 12, 2005 Clearance Examination Report.³⁸ Respondent’s reliance on this document, as discussed, *supra*, is incorrect. The Clearance Examination Report clearly states that

³³ Answer at ¶ 75.

³⁴ See notes 2-6, *supra*.

³⁵ CX Exhibit - 13.B. (Lease Transaction #2).

³⁶ See pages 18-22, *supra*.

³⁷ Complaint at ¶ 75; CX Exhibit - 13.J. (Lease Transaction #10).

³⁸ Answer at ¶ 75.

lead is still present in the property.³⁹ In light of that, Respondent was in error in concluding Respondent was not obligated to comply with 40 C.F.R. § 745.113(b)(1).

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(1) in connection Count 8 with regard to Lease Transaction #10.

5. Counts 10 - 14 - Respondent violated 40 C.F.R. § 745.113(b)(2) in connection with the leasing of the target housing (Lease Transactions #1, #2, #6, #10, and #11, respectively)

40 C.F.R. § 745.113(b)(2) provides in relevant part:

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish): . . .

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surface.

It is clear that no genuine issue of material fact exists and that, as a matter of law, Respondent violated 40 C.F.R. § 745.113(b)(2) as alleged in Counts 10-14 regarding Lease Transactions #1, #2, #6, #10, and #11, respectively in the Complaint.

Respondent failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards as an attachment or within the contracts relating to Lease

³⁹ CX Exhibit - 2.I. (October 12, 2005 "Clearance Examination Report for 713 N. Duke St., #2") ("Please be advised that Lead is still present in this property") (bold in original) at p. 2.

Transactions #1, #2, #6, #10, and #11.⁴⁰ Respondent admitted as such in the Answer.⁴¹ Respondent notes in the Answer that Respondent did not have any knowledge regarding lead based paint or lead based paint hazards in the target housing associated with Lease Transactions #1, #2, #6, #10, and #11.⁴² Pursuant to 40 C.F.R. § 745.113(b)(2), Respondent was obligated to indicate no knowledge of the presence of lead-based paint and/or lead-based paint hazards as an attachment or within the contracts relating to Lease Transactions #1, #2, #6, #10, and #11, but failed to do so.

With regard to Lease Transaction #10, Respondent again relies on the October 12, 2005 Clearance Examination Report for 713 N. Duke St., #2 claiming Lease Transaction #10 is exempt from the requirements of 40 C.F.R. § 745.113(b)(2). As discussed, *supra*, this reliance is misplaced. The Clearance Examination Report clearly states that lead is still present in the property.⁴³ Furthermore, Respondent was aware of and should have disclosed any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surface regarding the property subject to Lease Transaction #10. Respondent had additional information concerning the known lead-based paint and/or lead-based paint hazards at this property because Respondent was informed of such information by the City of

⁴⁰ Complaint at ¶ 78 and CX Exhibits - 13.A., B., F., J., and K. (Lease Transactions #1, #2, #6, #10, and #11, respectively).

⁴¹ Answer at ¶ 78 (“...Respondent did not provide a statement disclosing the presence of known lead-based paint.”).

⁴² Answer at ¶ 78.

⁴³ CX Exhibit - 2.I. (October 12, 2005 “Clearance Examination Report for 713 N. Duke St., #2”) (“**Please be advised that Lead is still present in this property**”) (bold in original) at p. 2.

Lancaster prior to executing Lease Transaction #10.⁴⁴

As a result, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(2) in connection with Lease Transactions #1, #2, #6, #10, and #11 and, therefore, Respondent is liable as alleged in Counts 10-14 of the Complaint.

6. Counts 15 - 25 - Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with the leasing of the target housing

40 C.F.R. § 745.113(b)(4) provides in relevant part:

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish): . . .

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet.....

It is clear that no genuine issue of material fact exists and that, as a matter of law, Respondent violated 40 C.F.R. § 745.113(b)(4) as alleged in Counts 15 - 25 in the Complaint.

a. Count 15 (Lease Transaction #1)

Respondent failed to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the lease for the Target Housing subject to Lease Transactions #1, as required by 40 C.F.R. § 745.113(b)(4).⁴⁵ Respondent admitted as such in the Answer.⁴⁶

As a result, no genuine issue of material fact exists and it is clear as a matter of law that

⁴⁴ CX Exhibit - 2.I. (September 29, 2005 letter Re: 713 N. Duke Street, Apt. #2) (7th page of CX - 2.I.) "Based on Lead dust wipe sampling sent to the laboratory, the data indicates the above referenced property is **NOT CONSIDERED SAFE FOR HABITATION AT THIS TIME.**" (emphasis in original).

⁴⁵ Complaint at ¶ 81 and CX Exhibit - 13.A.

⁴⁶ Answer at ¶ 81 ("...the Lease for Transaction #1 does not appear to include a statement by lessee affirming receipt of lead hazard information pamphlet...").

Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with Lease Transaction #1, and, therefore, Respondent is liable as alleged in Count 15 of the Complaint.

b. Counts 16 - 20 (Lease Transactions #2 - #6)

Respondent failed to include a statement by the lessees affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the leases for the Target Housing subject to Lease Transactions #2 - #6, as required by 40 C.F.R. § 745.113(b)(4).⁴⁷ Respondent generally denies the allegation, but is completely silent otherwise and fails to address or explain the material facts as alleged in the Complaint as to Lease Transactions #2 - #6 in the Answer.⁴⁸

Pursuant to 40 C.F.R. § 22.15(d) in the Answer to the Complaint, the failure of the respondent to admit, deny, or explain any material factual allegations contained in the complaint constitutes an admission of the allegation. Paragraph #81 in the Answer specifically addresses all of the lease transactions as alleged in Paragraph #81 of the Complaint with the exception of Lease Transactions #2 - #6. Respondent's Answer to this allegation in the Complaint is so clearly deficient under Section 22.15(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. § 22.15(b), that under Section 22.15(d) of the Rules of Practice, 40 C.F.R. § 22.15(d), the material factual allegations contained in the Complaint with regard to this count should be deemed admitted.⁴⁹

⁴⁷ Complaint at ¶ 81 and CX Exhibits - 13.B. - F.

⁴⁸ Answer at ¶ 81.

⁴⁹ Rule 22.15 provides in pertinent part:

(b) Contents of the answer. The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which the respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(d) Failure to admit, deny, or explain. Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

In the alternative, assuming *arguendo*, that Respondent did reference Lease Transactions #2 - #6 in the Answer and did generally deny the allegation, accelerated decision on these counts is still appropriate for the following reasons: In Count 16 (Lease Transaction #2), there is no lead hazard disclosure information whatsoever⁵⁰ in violation of 40 C.F.R. § 745.113(b)(4); in Count 17 (Lease Transaction #3), the lessee did not indicate in the Lead Hazards Discloser [sic] Requirements section that lessee had received the lead hazard information pamphlet⁵¹ in violation of violation 40 C.F.R. § 745.113(b)(4); in Count 18 (Lease Transaction #4), the lessee did not indicate in the Lead Hazards Discloser [sic] Requirements section that lessee had received the lead hazard information pamphlet⁵² in violation of violation 40 C.F.R. § 745.113(b)(4); in Count 19 (Lease Transaction #5), in the Lead Hazards Discloser [sic] Requirements section, the Respondent initialed the blank next to the line “Landlord knows about the lead-based paint and hazards, including how Landlord learned that it is there, where it is, and the condition of painted walls, trim and other surfaces. Landlord must give Tenant any other information Landlord has about the lead-based paint and lead-based paint hazards”, however, the lessee did not indicate with lessee’s initials in the blank next to the line, “Tenant received all records and reports that Landlord listed in paragraph above”⁵³ in violation of violation 40 C.F.R. § 745.113(b)(4); and in Count 20 (Lease Transaction #6), there is no lead hazard disclosure information whatsoever⁵⁴ in violation of violation 40 C.F.R. § 745.113(b)(4).

As such, no genuine issue of material fact exists and it is clear as a matter of law that Respondent

⁵⁰ CX Exhibit - 13.B.

⁵¹ CX Exhibit - 13.C. at p. 3.

⁵² CX Exhibit - 13.D. at p. 3.

⁵³ CX Exhibit - 13.E. at p. 3.

⁵⁴ CX Exhibit - 13.F.

violated 40 C.F.R. § 745.113(b)(4) in connection with Lease Transactions #2 - #6, or, in the alternative admitted to said violations, and, therefore, Respondent is liable as alleged in Counts 16 - 20 of the Complaint.

c. Count 21 (Lease Transaction #7)

Respondent failed to include a statement by the lessee affirming receipt of: (1) a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or (2) a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to lessee either as an attachment to or within the lease for the Target Housing subject to Lease Transaction #7, as required by 40 C.F.R. § 745.113(b)(4).

In Lease Transaction #7, under the subheading “Lead Hazards Discloser [sic] Requirements,” Respondent indicated with his initials that “Landlord knows about the lead-based paint and hazards, including how Landlord learned that it is there, where it is, and the condition of painted walls, trim and other surfaces. Landlord must give Tenant any other information Landlord has about the lead-based paint and lead-based paint hazards.”⁵⁵ In Lease Transaction #7, below where the Landlord initialed, the only line initialed by the lessee is “Tenant received the pamphlet **Protect Your Family From Lead in Your Home**,” however, the line stating “Tenant read the information Landlord gave in paragraph above” and the line stating “Tenant received all records and reports and that Landlord listed in paragraph above” are NOT initialed by the lessee in violation of 40 C.F.R. § 745.113(b)(4).⁵⁶ The one line initialed by the lessee does not constitute a statement by the lessee affirming receipt of the information the Respondent’s initials

⁵⁵ CX Exhibit - 13.G. at p. 3.

⁵⁶ Id.

indicated he had at the time Lease Transaction #7 was executed.

Respondent, while denying the allegation in the Answer, makes a constructive admission by explaining the deficiencies of the lease documents by claiming the “form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies” and “[r]ather than direct the tenant to initial one of the those three options, tenant should have been directed to check each that apply...”⁵⁷ In this count, the records are paramount insofar as showing compliance, and Complainant submits that the deficiencies in the records constitute a clear violation of 40 C.F.R. § 745.113(b)(4).

As such, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with Lease Transaction #7, and therefore, Respondent is liable as alleged in Count 21 of the Complaint.

d. Count 22 (Lease Transaction #9)

Respondent failed to include a statement by the lessee(s) affirming receipt of: (1) a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to lessee and (2) the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the lease for the Target Housing subject to Lease Transactions #9, as required by 40 C.F.R. § 745.113(b)(4).⁵⁸

In Lease Transaction #9, under the subheading “Lead Hazards Discloser [sic] Requirements,” Respondent indicated with his initials that “Landlord knows about the lead-based paint and hazards, including how Landlord learned that it is there, where it is, and the condition of painted walls, trim and other surfaces. Landlord must give Tenant any other information Landlord has about the lead-based paint

⁵⁷ Answer at ¶ 81.

⁵⁸ Complaint at ¶ 81 and CX Exhibit - 13.I. at p. 3.

and lead-based paint hazards.”⁵⁹ In Lease Transaction #9, below where the Landlord initialed, the only line initialed by the lessee is “Tenant read the information Landlord gave in paragraph above” however, the line stating “Tenant received the pamphlet **Protect Your Family From Lead in Your Home**,” and the line stating “Tenant received all records and reports and that Landlord listed in paragraph above” are NOT initialed by the lessee in violation of 40 C.F.R. § 745.113(b)(4).⁶⁰ The one line initialed by the lessee does not constitute a statement by the lessee affirming receipt of the information the Respondent’s initials indicated he had at the time Lease Transaction #9 was executed nor receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the lease.

Respondent, while denying the allegation in the Answer, makes a constructive admission by explaining the deficiencies of the lease documents by claiming the “form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies” and “[r]ather than direct the tenant to initial one of the those three options, tenant should have been directed to check each that apply...”⁶¹ In this count, the records are paramount insofar as showing compliance, and Complainant submits that the deficiencies in the records constitute a clear violation of 40 C.F.R. § 745.113(b)(4).

As such, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with Lease Transaction #9, and therefore, Respondent is liable as alleged in Count 22 of the Complaint.

e. Count 23 (Lease Transaction #12)

Respondent failed to include a statement by the lessee affirming receipt of: (1) a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the

⁵⁹ CX Exhibit - 13.I. at p. 3.

⁶⁰ Id.

⁶¹ Answer at ¶ 81.

housing that have been provided to lessee either as an attachment to or within the lease for the Target Housing subject to Lease Transaction #12 as required by 40 C.F.R. § 745.113(b)(4).⁶²

In Lease Transaction #12, under the subheading “Lead Hazards Discloser [sic] Requirements,” Respondent indicated with his initials that “Landlord knows about the lead-based paint and hazards, including how Landlord learned that it is there, where it is, and the condition of painted walls, trim and other surfaces. Landlord must give Tenant any other information Landlord has about the lead-based paint and lead-based paint hazards.”⁶³ In Lease Transaction #12, below where the Landlord initialed, the two lines that are initialed by the lessee are “Tenant received the pamphlet **Protect Your Family From Lead in Your Home**,” and “Tenant read the information Landlord gave in paragraph above” however, the line stating “Tenant received all records and reports and that Landlord listed in paragraph above” is NOT initialed by the lessee in violation of 40 C.F.R. § 745.113(b)(4).⁶⁴ The two lines initialed by the lessee and the failure to initial the last line does not constitute a statement by the lessee affirming receipt of the information the Respondent’s initials indicated he had at the time Lease Transaction #12 was executed either as an attachment to or within the lease.

Respondent, while denying the allegation in the Answer, makes a constructive admission by explaining the deficiencies of the lease documents by claiming the “form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies” and “[r]ather than direct the tenant to initial one of the those three options, tenant should have been directed to check each that apply...”⁶⁵ In this count, the records are paramount insofar as showing compliance, and Complainant

⁶² Complaint at ¶ 81 and CX Exhibit - 13.L.

⁶³ CX Exhibit - 13.L. at p. 3.

⁶⁴ Id.

⁶⁵ Answer at ¶ 81.

submits that the deficiencies in the records constitute a clear violation of 40 C.F.R. § 745.113(b)(4).

As such, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with Lease Transaction #12, and therefore, Respondent is liable as alleged in Count 23 of the Complaint.

f. Count 24 (Lease Transaction #13)

Respondent failed to include a statement by the lessees affirming receipt of: (1) a statement by the lessor indicating no knowledge of the presence of known lead-based paint and/or lead-based paint hazards and (2) the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the lease for the Target Housing subject to Lease Transaction #13, as required by 40 C.F.R. § 745.113(b)(4).⁶⁶

In Lease Transaction #13, under the subheading “Lead Hazards Discloser [sic] Requirements,” Respondent indicated with his initials that “Landlord does not know that there is lead-based pain, or that there are lead-based paint hazards on the property.”⁶⁷ In Lease Transaction #13, below where the Landlord initialed, none of the three lines were initialed by the lessee. The three lines that lack initials are: (1) “Tenant received the pamphlet **Protect Your Family From Lead in Your Home**,” and (2) “Tenant read the information Landlord gave in paragraph above” and (3) “Tenant received all records and reports and that Landlord listed in paragraph above” in violation of 40 C.F.R. § 745.113(b)(4).⁶⁸ The complete lack of lessee initial(s) under the statements in the Lead Hazards Discloser [sic] Requirements section do not constitute a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(4) at the time Lease Transaction #13 was executed either as an attachment to or within the

⁶⁶ Complaint at ¶ 81 and CX Exhibit - 13.M.

⁶⁷ CX Exhibit - 13.M. at p. 3.

⁶⁸ Id.

lease.

Respondent, while denying the allegation in the Answer, makes a constructive admission by explaining the deficiencies of the lease documents by claiming the “form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies” and “[r]ather than direct the tenant to initial one of the those three options, tenant should have been directed to check each that apply...”⁶⁹ In this count, the records are paramount insofar as showing compliance, and Complainant submits that the deficiencies in the records constitute a clear violation of 40 C.F.R. § 745.113(b)(4).

As such, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with Lease Transaction #13, and therefore, Respondent is liable as alleged in Count 24 of the Complaint.

g. Counts 25 (Lease Transaction #14)

Respondent failed to include a statement by the lessees affirming receipt of: (1) a statement by the lessor indicating no knowledge of the presence of known lead-based paint and/or lead-based paint hazards and (2) the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the lease for the Target Housing subject to Lease Transaction #14, as required by 40 C.F.R. § 745.113(b)(4).⁷⁰

In Lease Transaction #14, under the subheading “Lead Hazards Discloser [sic] Requirements,” Respondent indicated with his initials that “Landlord does not know that there is lead-based pain, or that there are lead-based paint hazards on the property.”⁷¹ In Lease Transaction #14, below where the Landlord initialed, none of the three lines were initialed by the lessee. The three lines are: (1) “Tenant received the

⁶⁹ Answer at ¶ 81.

⁷⁰ Complaint at ¶ 81 and CX Exhibit - 13.M.

⁷¹ CX Exhibit - 13.M. at p. 3.

pamphlet **Protect Your Family From Lead in Your Home**,” and (2) “Tenant read the information Landlord gave in paragraph above” and (3) “Tenant received all records and reports and that Landlord listed in paragraph above” in violation of 40 C.F.R. § 745.113(b)(4).⁷² The complete lack of lessee initial(s) under the statements in the Lead Hazards Discloser [sic] Requirements section do not constitute a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(4) at the time Lease Transaction #14 was executed either as an attachment to or within the lease.

In the Answer, with respect to Count 25 (Lease Transaction #14) Respondent states that “Respondent is unable to locate a copy of the Lease, however, given the date of the Lease and th form used by the Respondent at the time that lease was to have been executed...Respondent believes that the tenant was properly provided with the appropriate lead hazard information pamphlet and that the lease form would property have reflected tenant’s receipt of the same.”^{73 74}

Respondent failed to include a statement by the lessees affirming receipt of: (1) a statement by the lessor indicating no knowledge of the presence of known lead-based paint and/or lead-based paint hazards and (2) the lead hazard information pamphlet required under 15 U.S.C. § 2686 either as an attachment to or within the lease for the Target Housing subject to Lease Transaction #14, as required by 40 C.F.R. § 745.113(b)(4).⁷⁵

In Lease Transaction #14, under the subheading “Lead Hazards Discloser [sic] Requirements,” Respondent indicated with his initials that “Landlord does not know that there is lead-based pain, or that

⁷² Id.

⁷³ Answer at ¶ 81.

⁷⁴ See n. 5.

⁷⁵ Complaint at ¶ 81 and CX Exhibit - 13.N.

there are lead-based paint hazards on the property.”⁷⁶ In Lease Transaction #14, below where the Landlord initialed, none of the three lines were initialed by the lessee. The three lines lacking initials are: (1) “Tenant received the pamphlet **Protect Your Family From Lead in Your Home**,” and (2) “Tenant read the information Landlord gave in paragraph above” and (3) “Tenant received all records and reports and that Landlord listed in paragraph above” in violation of 40 C.F.R. § 745.113(b)(4).⁷⁷ The complete lack of lessee initial(s) under the statements in the Lead Hazards Discloser [sic] Requirements section do not constitute a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(4) at the time Lease Transaction #14 was executed either as an attachment to or within the lease.

Respondent, while denying the allegation in the Answer, makes a constructive admission by explaining the deficiencies of the lease documents by claiming the “form of the lease incorrectly directs the tenant to initial one of the three statements, rather than each statement that applies” and “[r]ather than direct the tenant to initial one of the those three options, tenant should have been directed to check each that apply...”⁷⁸ In this count, the records are paramount insofar as showing compliance, and Complainant submits that the deficiencies in the records constitute a clear violation of 40 C.F.R. § 745.113(b)(4).

As such, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(4) in connection with Lease Transaction #14, and therefore, Respondent is liable as alleged in Count 25 of the Complaint.

7. Count 26 - Respondent violated 40 C.F.R. § 745.113(b)(6) in connection with the leasing of the target housing (Lease Transaction #8)

⁷⁶ CX Exhibit - 13N. at p. 3.

⁷⁷ Id.

⁷⁸ Answer at ¶ 81.

40 C.F.R. § 745.113(b)(6) provides in relevant part:

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish): . . .

(6) The signatures of the lessors, lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

It is clear that no genuine issue of material fact exists and that, as a matter of law, Respondent violated 40 C.F.R. § 745.113(b)(6) as alleged in Count 26 in the Complaint.

Respondent failed to include, as an attachment to or within the lease for the Target Housing, the signatures of the lessor and lessee, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature in the lease for the Target Housing subject to Lease Transaction #8, as required by 40 C.F.R. § 745.113(b)(6).⁷⁹ Respondent denies this allegation claiming that, “Respondent is unable to locate a copy of Lease Transaction #8, however, given the referenced date for that lease, Respondent does believe that the required signatures of lessor and lessee certifying the required certifications, were in fact provide [sic] in the referenced lease transaction.”⁸⁰⁸¹ Respondent’s belief is incorrect.

A review of Lease Transaction #8 reveals that the signature line for the Tenant(s) is blank on all three pages.⁸² The signature of the lessee is required to comply with 40 C.F.R. § 745.113(b)(6) and the lack of same is a violation of 40 C.F.R. § 745.113(b)(6) with regard to Count 26.

As such, no genuine issue of material fact exists and it is clear as a matter of law that Respondent violated 40 C.F.R. § 745.113(b)(6) in connection with Lease Transaction #8, and therefore, Respondent is

⁷⁹ Complaint at ¶ 84 and CX Exhibit - 13.H.

⁸⁰ Answer at ¶ 84.

⁸¹ See n. 4.

⁸² CX Exhibit - 13.H. at pp. 1-3.

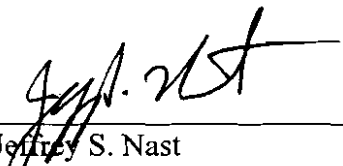
liable as alleged in Count 26 of the Complaint.

VI. Conclusion

Based upon the evidence and the legal analysis presented herein, it is clear that no genuine issue as to a material fact exists in the case at bar and that Complainant is entitled to judgment as a matter of law as to the liability of the Respondent under Counts 1 - 26 in the Complaint. As a result, Complainant respectfully requests that this Presiding Officer grant its Motion for Accelerated Decision as to Liability and issue an Order finding Respondent liable under Counts 1 - 26 of the Complaint.

Respectfully submitted,

Date: 2/10/09

By: 

Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. EPA Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, the original and one true and correct copy of Complainant's Motion for Accelerated to Decision as to Liability/Brief in Support in the above-captioned matter were hand-delivered to and filed with the Regional Hearing Clerk of U.S. EPA Region III, 3RC30, 1650 Arch Street, Philadelphia, PA, and that a true and correct copy was served via overnight mail (Federal Express) upon the following:

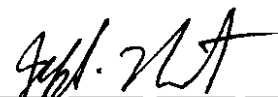
The Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Mail Code 1900L
1099 14th St., N.W.
Washington, D.C. 20460

and

Charles B. Haws, Esq.
Barley Synder LLC
501 Washington Street
Reading, PA 19603

Respectfully submitted,

Date: 2/10/09

By: 
Jeffrey S. Nast
Senior Assistant Regional Counsel
U.S. EPA Region III
Counsel for Complainant