



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RECEIVED

2012 JAN -2 P 3: 56

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK  
WS

January 2, 2013

**BY HAND**

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

Re: In the Matter of Ciotola and Simeone; Docket No. TSCA-01-2012-0005

Dear Ms. Santiago:

Enclosed are an original and one copy of the Complaint and Certificate of Service for filing with respect to the above-captioned matter.

Kindly file the documents in the usual manner. Thanks very much for your help.

Sincerely,

A handwritten signature in blue ink that reads "Christine M. Foot".

Christine M. Foot  
Enforcement Counsel

Enclosures

cc: Donald Ciotola  
Carol Simeone

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED  
2012 JAN -2 P 3:55

IN THE MATTER OF: )  
)  
DONALD CIOTOLA )  
35 Evergreen Road )  
Chepachet, Rhode Island 02814 )  
)  
and )  
)  
CAROL SIMEONE )  
8 Leander Street )  
Danielson, CT 06239 )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. TSCA-01-2012-0005

EPA ORC  
OFFICE OF  
HEARING CLERK WS

**ADMINISTRATIVE COMPLAINT  
AND NOTICE OF OPPORTUNITY  
FOR HEARING**

**I. STATEMENT OF AUTHORITY**

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a); 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA”), Region 1.

**II. NATURE OF THE ACTION**

2. Donald Ciotola and Carol Simeone, the Respondents in this action, are hereby notified of Complainant’s determination that they have violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the

Act”), 42 U.S.C. §§ 4851 et seq., and the federal regulations promulgated thereunder, entitled “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property,” set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Complainant seeks civil penalties in the amount of \$82,790 pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA, 15 U.S.C. § 2689, are subject to the assessment by Complainant of civil penalties.

### **III. STATUTORY AND REGULATORY BACKGROUND**

#### **A. FEDERAL LEAD DISCLOSURE LAW**

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account in the rental of homes and apartments. To carry out this purpose, the Act gave EPA regulatory authority to require the disclosure of information related to lead-based paint and lead-based paint hazards upon the sale or leasing of residential property. 42 U.S.C. § 4852d(a).

4. In 1996, EPA promulgated regulations implementing the disclosure requirements of Section 1018 of the Act, 42 U.S.C. § 4852d. These regulations are set forth in the Disclosure Rule at 40 C.F.R. Part 745, Subpart F.

5. Housing stock that falls within the statutory and regulatory definition of “target housing” is subject to the Disclosure Rule. “Target housing” is defined as any housing

constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides, or is expected to reside in, such housing) or any 0-bedroom dwelling. See 15 U.S.C. § 2681(17); 40 C.F.R. § 745.103.

6. Before a lessee is obligated under contract to lease target housing, the Disclosure Rule requires lessors to, among other things:

- (a) provide the lessee with an EPA-approved lead hazard information pamphlet (“Pamphlet”);
- (b) provide available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the housing;
- (c) include, within or as an attachment to the lease contract, a Lead Warning Statement;
- (d) include, within or as an attachment to the lease contract, a statement either disclosing to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating that the lessor has no knowledge thereof;
- (e) include, within or as an attachment to the lease contract, either a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing or a statement indicating that no such records are available; and
- (f) include, within or as an attachment to the lease contract, a statement by the lessee affirming the lessee’s receipt of the Pamphlet, the lead disclosure statement, and the list of records, all described above.

See 40 C.F.R. §§ 745.107, .113.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

8. Any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689, is liable to the United States for a civil monetary penalty. 15 U.S.C. § 2615(a)(1); 40 C.F.R. § 745.118.

9. Violations of the Disclosure Rule occurring on or after January 13, 2009, are subject to penalties up to \$16,000 per violation. See 42 U.S.C. § 4852d(b)(5); 40 C.F.R. Part 19; 40 C.F.R. § 745.118(f); see also 73 Fed. Reg. 75,340 (Dec. 11, 2008) (final rule adjusting civil penalties for inflation as mandated by Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701).

#### **B. RHODE ISLAND LEAD DISCLOSURE REQUIREMENTS**

10. In 2005, the State of Rhode Island enacted the Lead Hazard Mitigation Act to prevent lead poisoning and to educate prospective purchasers and lessees about the hazards associated with lead-based paint. See R.I. Gen. Laws § 42-128.1-5. State regulations promulgated by the Rhode Island Housing Resources Commission (“HRC”) implementing the Lead Hazard Mitigation Act require owners of rental properties built before 1978 to: (1) complete an approved lead hazard awareness seminar; (2) hire a licensed lead inspector to perform an Independent Clearance Inspection to assess compliance with state lead mitigation standards; (3) obtain a Certificate of Conformance; (4) provide prospective tenants with an HRC-approved information pamphlet about lead hazards and a copy of the most recent Independent Inspection Clearance Report, and (5) have tenants sign a lead disclosure form. See generally, 96-200-003 R.I. Code R. § 6.

11. The lead awareness training required by HRC includes coverage of both federal and state lead disclosure requirements.

12. The Independent Clearance Inspection required by HRC regulations consists of the verification that the property owner has completed the lead awareness training, the results of visual inspection and dust testing performed by a licensed independent lead inspector, and an evaluation of any supporting laboratory documentation. Id. § 6E.

13. The lead hazard information pamphlet required by HRC for use in rental transactions in Rhode Island is EPA's Pamphlet, "Protect Your Family from Lead in Your Home." See [www.health.ri.gov/healthrisks/poisoning/lead/for/landlords](http://www.health.ri.gov/healthrisks/poisoning/lead/for/landlords) (last visited Nov. 19, 2012). The sample lead disclosure form approved for use in Rhode Island rental transactions is the model disclosure form provided by EPA. See id.

14. In addition to an Independent Clearance Inspection Report and a Certificate of Conformance, lessors may have additional reports or records pertaining to lead-based paint and/or lead-based paint hazards issued by state or federal government agencies, courts, independent contractors, or other entities.

15. Reports and records pertaining to lead-based paint and/or lead-based paint hazards in target housing that are required by Rhode Island's lead disclosure laws or provided to lessors by state or federal agencies or courts, as well as any other available reports or records related to lead-based paint and/or lead-based paint hazards in the target housing, are subject to the federal disclosure requirements and related penalty provisions set forth in Section 1018 of the Act, 42 U.S.C. § 4852(d), and 40 C.F.R Part 745, Subpart F. See Section III.A, supra.

#### **IV. GENERAL ALLEGATIONS**

16. Respondents Donald Ciotola and Carol Simeone jointly own and offer for lease approximately six residential properties with approximately twenty-one dwelling units. Some of these properties are located in Woonsocket and Harrisville, Rhode Island.

17. At all times relevant to the allegations in this Complaint, Respondents were the owners and lessors of the following residential properties (collectively, the "Properties"):

390 Carrington Avenue, Woonsocket, Rhode Island (a four-unit apartment building)<sup>1</sup>;  
206 Dulude Avenue, Woonsocket, Rhode Island (a three-unit apartment building); and  
219 Main Street, Harrisville, Rhode Island (a two-unit apartment building)<sup>2</sup>.

18. All of the Properties were built before 1978. All of the rental units located at the Properties are or were, at the time of the violations alleged in this Complaint, “target housing,” as defined in 40 C.F.R. § 745.103. None of the rental units satisfies the requirements for an exemption to the provisions of the Act or the Disclosure Rule.

19. With respect to the allegations in this Complaint, Respondents offered for lease, and entered into lease contracts with tenants for, the following rental units located within the Properties:

- a. 390 Carrington Avenue - Basement, Woonsocket, Rhode Island, with a lease starting on or about May 1, 2011;
- b. 390 Carrington Avenue - 1<sup>st</sup> Floor, Woonsocket, Rhode Island, with a lease starting on or about December 1, 2010;
- c. 206 Dulude Avenue - 1<sup>st</sup> Floor, Woonsocket, Rhode Island, with a lease starting on or about June 1, 2011;
- d. 206 Dulude Avenue - 2<sup>nd</sup> Floor, Woonsocket, Rhode Island, with a lease starting on or about May 15, 2011; and
- e. 219 Main St, Harrisville, Rhode Island, with a lease starting on or about January 1, 2011.

20. Accordingly, each of the Respondents is a “lessor” as defined in 40 C.F.R. § 745.103.

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<sup>1</sup> This address is alternately referred to as 392 Carrington Ave.

<sup>2</sup> This number is alternately identified as “219-221” and the street is alternately referred to “Harrisville Main Street.”



21. On June 7, 2011, an EPA Inspector conducted an inspection (“Inspection”) to evaluate Respondents’ compliance with Section 1018 of the Act, 42 U.S.C. § 4852d, and the Disclosure Rule.

22. The Inspection was conducted at 8 Leander St in Danielson, Connecticut, which is Ms. Simeone’s residence. The EPA Inspector and Ms. Simeone were present.

23. During the Inspection, Ms. Simeone informed the EPA Inspector that Respondents do not give a copy of the Pamphlet to those tenants who receive U.S. Housing and Urban Development “Section 8” housing assistance because she believed the Pamphlet was provided by the housing authority. Of the leases listed in Paragraph 19, only 206 Dulude Ave - 1<sup>st</sup> Floor was supported by “Section 8” housing assistance. Ms. Simeone further stated that Respondents have a practice of providing the Pamphlet to tenants who do not receive Section 8 housing assistance, but she produced no supporting documentation indicating that she had done so. She did not have any copies of the Pamphlet in her possession, and she did not have any statements acknowledging receipt of the Pamphlet from any tenants.

24. During the Inspection, Ms. Simeone also informed the EPA Inspector that Respondents do not provide tenants with copies of records or reports available to the lessors pertaining to lead-based paint and/or lead-based paint hazards.

25. During the Inspection, Ms. Simeone informed the EPA Inspector that Respondents do not use disclosure forms themselves, but, for tenants who receive “Section 8” housing assistance, they do sign disclosure forms provided by the housing authority. Ms. Simeone did not have copies of signed disclosure forms accompanying



any of the leases listed in Paragraph 19, and she did not have any blank copies of disclosure forms in her files.

26. During the Inspection, the EPA Inspector gave Ms. Simeone a compliance package containing information about the Disclosure Rule and verbally reviewed the requirements with Ms. Simeone.

27. Based on the Inspection and documents provided by the Respondents, EPA determined that Respondents failed to comply with the federal lead disclosure requirements set forth in Section 1018 of the Act, 42 U.S.C. § 4852d, and 40 C.F.R. Part 745, Subpart F.

28. Respondents obtained Certificates of Conformance for at least some of the rental units within the Properties, including 390 Carrington Ave - Basement, in Woonsocket, Rhode Island. As stated in Section III.B, supra, in order to receive a Certificate of Conformance from HRC, Respondents were required to complete lead awareness training, which includes a review of federal lead disclosure requirements.

## **V. VIOLATIONS**

29. Complainant has identified the following violations of the Act and the Disclosure Rule based on the Inspection as well as on information and documents obtained from Respondent and/or other sources.

### **COUNT I: Failure to Provide Records Pertaining to Lead-Based Paint/Hazards**

30. Complainant incorporates by reference Paragraphs 1 through 29.

31. The Disclosure Rule provides that a lessor is required to provide to the lessee any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing before the lessee becomes obligated under the lease

contract. 40 C.F.R. § 745.107(a)(4). This requirement includes records or reports regarding common areas. The term “available records” includes records in the lessor’s possession or records that are reasonably obtainable by the lessor at the time of the disclosure. Id.

32. Respondents failed to provide the lessee associated with the rental transaction identified in Paragraph 19(a), above, with records or reports pertaining to lead-based paint or lead-based paint hazards before that lessee entered into a contract to lease 390 Carrington Ave - Basement, Woonsocket, Rhode Island.

33. At the time of the lease of 390 Carrington Ave - Basement, Woonsocket, Rhode Island, referenced above in Paragraph 19(a), the following information pertaining to lead-based paint and/or lead-based paint hazards in the rental unit was available to Respondent: a Certificate of Conformance, issued following an Independent Clearance Inspection conducted on December 21, 2009.

34. Respondents’ failure to provide records pertaining to lead-based paint and/or lead-based paint hazards prior to the lessee becoming obligated under a contract to lease target housing constitutes a violation of 40 C.F.R. § 745.107(a)(4) and TSCA Section 409, 42 U.S.C. § 2689.

**COUNT II: Failure to Include Lead Warning Statement**

35. Complainant incorporates by reference Paragraphs 1 through 34.

36. The Disclosure Rule provides that each contract to lease target housing must include, either as an attachment or within the lease contract itself, the “Lead Warning Statement” set forth in 40 C.F.R. § 745.113(b)(1).

37. Respondents failed to include a Lead Warning Statement in, or attached to, the leases associated with the rental transactions identified in Paragraphs 19(a), 19(b), 19(d), and 19(e), above.

38. Each failure to include the “Lead Warning Statement” in, or attached to, the leases, as required by 40 C.F.R. § 745.113(b)(1), constitutes a separate violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA, 42 U.S.C. § 2689, for a total of four (4) violations.

**COUNT III: Failure to Include Disclosure Statement Regarding Lead-Based Paint/Hazards**

39. Complainant incorporates by reference Paragraphs 1 through 38.

40. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing must include a statement, either as an attachment or within the lease contract itself, disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating that the lessor has no knowledge of the presence of lead-based paint or lead-based paint hazards, in the target housing.

41. Respondents failed to provide the lessees associated with the rental transactions identified in Paragraphs 19(a), 19(b), 19(d), and 19(e) with a signed statement disclosing the presence of lead-based paint and/or lead-based paint hazards or indicating that Respondents had no knowledge of lead-based paint and/or lead-based paint hazards. See 40 C.F.R. § 745.113(b)(2).

42. Each failure to include the required lead disclosure statement, either as an attachment or within the lease contract, for the rental transactions constitutes a separate violation of 40 C.F.R. § 745.113(b)(2) and Section 409 of TSCA, 42 U.S.C. § 2689, for a total of four (4) violations.

**COUNT IV: Failure to Include List of Records Pertaining to Lead-Based Paint/Hazards**

43. Complainant incorporates by reference Paragraphs 1 through 42.

44. The Disclosure Rule requires lessors to list, in an attachment to or within the lease contract itself, all available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing. 40 C.F.R. § 745.113(b)(3). If no such records or reports are available, lessors must include a statement indicating that no such records or reports are available. See id.

45. Respondents failed to provide the lessees associated with the rental transactions identified in Paragraphs 19(b), 19(d), and 19(e) with a statement, as required by 40 C.F.R. § 745.113(b)(3), listing available records and reports pertaining to lead-based paint or lead-based paint hazards or indicating that no such records were available for the target housing.

46. Each failure to include a statement, either as an attachment to or within the lease contract, listing available records or reports pertaining to lead-based paint and/or lead based paint hazards or indicating that no such records or reports were available for the target housing constitutes a separate violation of 40 C.F.R. § 745.113(b)(3) and Section 409 of TSCA, 42 U.S.C. § 2689, for a total of three (3) violations.

**COUNT V: Failure to Obtain a Statement by Lessee Affirming Receipt of the Required Lead Disclosure Information**

47. Complainant incorporates by reference Paragraphs 1 through 46.

48. The Disclosure Rule requires a lessor to obtain from a lessee a statement affirming that the lessee received the Pamphlet, the statement disclosing the presence of lead-based paint and/or lead-based paint hazards or indicating that Respondents had no

knowledge thereof, and the list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or a statement that no such records were available. This statement is required to be included as an attachment to or within the lease contract itself. 40 C.F.R. § 745.113(b)(4).

49. Respondents failed to obtain a signed statement from the lessees associated with the rental transactions identified in Paragraphs 19(a), 19(b), 19(c), 19(d), and 19(e), as required by 40 C.F.R. § 745.113(b)(4), affirming that the lessees had received the required lead-based paint disclosure information for the target housing.

50. Each failure to include a signed statement, either as an attachment to or within the lease contract, from the lessee affirming the lessee's receipt of the required documentation pertaining to lead-based paint and/or lead-based paint hazards in the target housing constitutes a separate violation of 40 C.F.R. § 745.113(b)(4) and Section 409 of TSCA, 42 U.S.C. § 2689, for a total of five (5) violations.

## **VI. PROPOSED PENALTY**

51. Based on the violations described in this Complaint, a total civil penalty of \$82,790 is proposed to be assessed against the Respondents. The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. § 745.118(f), as well as the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19.

52. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, its ability to pay, the effect of the proposed

penalty on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

53. To assess a penalty for the violations alleged in this Complaint, Complainant considered the particular facts and circumstances of this case with specific reference to EPA’s December 2007 Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, a copy of which is enclosed with this Complaint. The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

54. The penalties proposed for each of the violations alleged in this Complaint are set forth, below:

<b>Count</b>	<b>Regulation Violated</b>	<b>Description</b>	<b>Penalty</b>
1	40 C.F.R. § 745.107(a)(4)	Failure to Provide Records Pertaining to Lead-Based Paint/Hazards	\$8,500
2	40 C.F.R. § 745.113(b)(1)	Failure to Include Lead Warning Statement	\$28,360
3	40 C.F.R. § 745.113(b)(2)	Failure to Disclose Presence of Lead-Based Paint/Hazards or Indicate No Knowledge Thereof	\$22,680
4	40 C.F.R. § 745.113(b)(3)	Failure to List Records or Reports and/or State None Were Available	\$5,550
5	40 C.F.R. § 745.113(b)(4)	Failure to Include Lessee’s Statement Affirming Receipt of the Required Lead Disclosure Information	\$17,700
		<b>Total</b>	<b>\$82,790</b>

The document marked as Attachment A to this Complaint provides a more detailed explanation of the penalty proposed herein. The proposed penalty was developed based upon the best information available to Complainant but may be adjusted if Respondents establish a *bona fide* claim of inability to pay or other issues relevant to determining an appropriate penalty.

## **VII. QUICK RESOLUTION**

55. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondents have the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's, or certified check payable to "Treasurer, United States of America." The check should note the docket number of this Complaint (TSCA-01-2012-0005) and should be forwarded to:

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

In addition, at the time of payment, Respondents should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, Massachusetts 02109-3912

and

Christine M. Foot  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES 04-2  
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondents need not file an Answer. If Respondents agree to pay the penalty but need additional time, Respondents may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondents need not file an Answer, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such



payment within 60 days of receipt of the Complaint may subject the Respondents to default. See 40 C.F.R. § 22.18(a).

#### **VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

56. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondents have a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondents' written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

57. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. The failure of Respondents to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense, the facts that Respondents dispute, the basis for opposing any proposed penalty, and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

58. Respondents shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to the Regional Hearing Clerk at the following address:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, Massachusetts 02109-3912

Respondents shall also serve a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to Christine M. Foot, the attorney assigned to represent Complainant and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Christine M. Foot  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES 04-2  
Boston, Massachusetts 02109-3912

59. If Respondents fail to file a timely Answer to the Complaint, Respondents may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondents, without further proceedings, thirty (30) days after the default order becomes final.

**IX. OPPORTUNITY FOR INFORMAL SETTLEMENT CONFERENCE**

60. Whether or not a hearing is requested upon filing an Answer, Respondents may confer informally with Complainant or her designee concerning the violations alleged in this Complaint. Such a conference provides Respondents with an opportunity to respond informally to the allegations, and to provide whatever additional information may be

relevant to the disposition of this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

61. To explore the possibility of settlement, Respondents or Respondents' counsel should contact Christine Foot, the attorney of record, at the address cited above or by calling (617) 918-1333. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted in order to avoid default.

**X. CONTINUED COMPLIANCE OBLIGATION**

62. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.



Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

1/2/13  
Date

*In the Matter of: Ciotola and Simeone*  
Docket No. TSCA-01-2012-0005

CERTIFICATE OF SERVICE

I hereby certify that foregoing Complaint, Compliance Order, and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

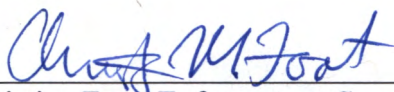
One copy,  
Certified Mail, Return Receipt  
Requested:

Donald Ciotola  
35 Evergreen Road  
Chepachet, Rhode Island 02814

One copy,  
Certified Mail, Return Receipt  
Requested:

Carol Simeone  
8 Leander Street  
Danielson, CT 06239

Dated: 1/2/13

  
\_\_\_\_\_  
Christine Foot, Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square Suite 100  
Mail Code OES04-2  
Boston, MA 02109-3912  
Phone: 617-918-1333  
Fax: 617-918-0333  
E-mail: foot.christine@epa.gov

***In the Matter of: Ciotola and Simeone***  
**Docket No. TSCA-01-2012-0005**

**ATTACHMENT A**  
**Proposed TSCA Penalty**

The following provides the justification for the proposed penalty calculation in the administrative penalty action against Donald Ciotola and Carol Simeone (“Respondents”), which seeks \$82,790 in penalties for alleged violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), codified at 42 U.S.C. §§ 4851 et seq., and its implementing regulations at 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”).

Section 16(a)(1) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of TSCA Section 409 shall be liable to the United States for a civil penalty. Section 1018(b)(5) of the Act provides that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Pursuant to 40 C.F.R. § 745.118(f), the Debt Collection Improvement Act of 1996, found at 31 U.S.C. § 3701, and 40 C.F.R. Part 19, effective January 12, 2009, the maximum penalty per violation is \$16,000. 73 Fed. Reg. 75,340-46 (Dec. 11, 2008).

The alleged violations of the Disclosure Rule are based upon documents and information obtained from Respondents pursuant to an Inspection and/or otherwise collected during EPA’s investigation of this matter. The penalty was calculated according to EPA’s December 2007 Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy (“Penalty Policy”).

**COUNT 1. Failure to Provide Records Pertaining to Lead-Based Paint/Hazards**

**Provision Violated:** 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees with any records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing.

**Circumstance Level:** Failing to provide lessees with records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 745.107(a)(4), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Penalty Policy, Appendix B, a violation of 40 C.F.R. § 745.107(a)(4) is a *Level 1* violation.

**Extent of Harm:** The Penalty Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing.

Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrant a *major* extent factor.



Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

During the inspection, Ms. Simeone indicated that children live in most of the apartments addressed by the Complaint. Where the age of the youngest individual in the unit is not known, EPA uses a *significant* extent factor. See Penalty Policy at 13, 29. Therefore, the proposed penalty for the violations alleged in Count 1 is as follows:

Address	Circumstance Level	Extent of Harm	Gravity-Based Penalty
390 Carrington Avenue - Basement, Woonsocket, RI	Level 1	Significant	\$8,500
<b>Total Count 1</b>			<b>\$8,500</b>

**COUNT 2. Failure to Include Lead Warning Statement**

**Provision Violated:** 40 C.F.R. § 745.113(b)(1) requires that each contract to lease target housing include as an attachment, or within the lease contract, the Lead Warning Statement.

**Circumstance Level:** Failing to include the Lead Warning Statement in the language of the lease contract, or as an attachment thereto, pursuant to 40 C.F.R. § 745.113(b)(1), results in a *high probability* of impairing a lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Penalty Policy, Appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

**Extent of Harm:** The Penalty Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing.

Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrant a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

During the inspection, Ms. Simeone indicated that children live in most of the apartments addressed by the Complaint. Where the age of the youngest individual in the unit is not known, EPA uses a *significant* extent factor. See Penalty Policy at 13, 29. Therefore, the proposed penalty for the violations alleged in Count 2 is as follows:

Address	Circumstance Level	Extent of Harm	Gravity-Based Penalty
390 Carrington Avenue - Basement, Woonsocket, RI	Level 2	Significant	\$7,090
390 Carrington Ave - 1 <sup>st</sup> Floor, Woonsocket, RI	Level 2	Significant	\$7,090
206 Dulude Avenue - 2 <sup>nd</sup> Floor, Woonsocket, RI	Level 2	Significant	\$7,090
219 Main Street, Harrisville, RI	Level 2	Significant	\$7,090
<b>Total Count 2</b>			<b>\$28,360</b>

**COUNT 3. Failure to Include Disclosure Statement Regarding Lead-Based Paint/Hazards**

**Provision Violated:** 40 C.F.R. § 745.113(b)(2) requires that each contract to lease target housing include, as an attachment to or within the lease contract, 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.

**Circumstance Level:** Failing to include the statement disclosing lead-based paint and/or lead-based paint hazards or indicating no knowledge thereof, results in a *medium probability* of impairing the lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in the housing, violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Penalty Policy, Appendix B, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

**Extent of Harm:** The Penalty Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing.

Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrant a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.



During the inspection, Ms. Someone indicated that children live in most of the apartments addressed by the Complaint. Where the age of the youngest individual in the unit is not known, EPA uses a *significant* extent factor. See Penalty Policy at 13, 29. Therefore, the proposed penalty for the violations alleged in Count 3 is as follows:

Address	Circumstance Level	Extent of Harm	Gravity-Based Penalty
390 Carrington Avenue - Basement, Woonsocket, RI	Level 3	Significant	\$5,670
390 Carrington Ave - 1 <sup>st</sup> Floor, Woonsocket, RI	Level 3	Significant	\$5,670
206 Dulude Avenue - 2 <sup>nd</sup> Floor, Woonsocket, RI	Level 3	Significant	\$5,670
219 Main Street, Harrisville, RI	Level 3	Significant	\$5,670
<b>Total Count 3</b>			<b>\$22,680</b>

**COUNT 4. Failure to Include List of Records Pertaining to Lead-Based Paint/Hazards**

**Provision Violated:** 40 C.F.R. § 745.113(b)(3) requires that each contract to lease target housing include, as an attachment to or within the lease contract, a list of any records or reports available to the lessor that pertain to lead hazard information or to indicate that no such records or reports are available.

**Circumstance Level:** Failing to include a list of any records pertaining to lead hazards or to indicate that no such records exist, as an attachment to or within the contract to lease target housing, results in a *low probability* of impairing the lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in the housing, violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Penalty Policy, Appendix B, a violation of 40 C.F.R. § 745.113(b)(3) is a *Level 5* violation.

**Extent of Harm:** The Penalty Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing.

Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrant a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women

warrants a *minor* extent factor.

During the inspection, Ms. Simeone indicated that children live in most of the apartments addressed by the Complaint. Where the age of the youngest individual in the unit is not known, EPA uses a *significant* extent factor. See Penalty Policy at 13, 29. Therefore, the proposed penalty for the violations alleged in Count 4 is as follows:

Address	Circumstance Level	Extent of Harm	Gravity-Based Penalty
390 Carrington Avenue - 1 <sup>st</sup> Floor, Woonsocket, RI	Level 5	Significant	\$1,850
206 Dulude Avenue - 2 <sup>nd</sup> Floor, Woonsocket, RI	Level 5	Significant	\$1,850
219 Main Street, Harrisville, RI	Level 5	Significant	\$1,850
<b>Total Count 4</b>			<b>\$5,550</b>

**COUNT 5. Failure to Obtain a Statement by Lessee Affirming Receipt of the Required Lead Disclosure Information**

**Provision Violated:** 40 C.F.R. § 745.113(b)(4) requires that each contract to lease target housing include, as an attachment to or within the lease contract, a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) (disclosure statement), (b)(3) (list of records or reports), and the Pamphlet.

**Circumstance Level:** Failing to obtain and include, as an attachment to or within the contract to lease target housing, a statement by the lessee affirming receipt of the required lead disclosure information results in a *medium probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to ensure that potential lessees received notice of specific information relating to the presence of lead in the housing, violating this provision does not allow the lessees to protect themselves. As a result, under the Penalty Policy, Appendix B, a violation of 40 C.F.R. § 745.113(b)(4) is a *Level 4* violation.

**Extent of Harm:** The Penalty Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing.

Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrant a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and

eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

During the inspection, Ms. Simeone indicated that children live in most of the apartments addressed by the Complaint. Where the age of the youngest individual in the unit is not known, EPA uses a *significant* extent factor. See Penalty Policy at 13, 29. Therefore, the proposed penalty for the violations alleged in Count 5 is as follows:

<b>Address</b>	<b>Circumstance Level</b>	<b>Extent of Harm</b>	<b>Gravity-Based Penalty</b>
390 Carrington Avenue - Basement, Woonsocket, RI	Level 4	Significant	\$3,540
390 Carrington Avenue - 1 <sup>st</sup> Floor, Woonsocket, RI	Level 4	Significant	\$3,540
206 Dulude Avenue - 1 <sup>st</sup> Floor, Woonsocket, RI	Level 4	Significant	\$3,540
206 Dulude Avenue - 2 <sup>nd</sup> Floor, Woonsocket, RI	Level 4	Significant	\$3,540
219 Main Street, Harrisville, RI	Level 4	Significant	\$3,540
<b>Total Count 5</b>			<b>\$17,700</b>