

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:

THE COMMUNITY BUILDERS, INC.,
CHAUNCY HOUSE LIMITED PARTNERSHIP,
CHURCHILL HOMES II LIMITED PARTNERSHIP,
CINQUE GREEN LIMITED PARTNERSHIP,
DARTMOUTH TCB LIMITED PARTNERSHIP,
FRANKLIN SCHOOL HOUSING LIMITED
PARTNERSHIP

KENSINGTON SQUARE I LIMITED PARTNERSHIP,
KENSINGTON SQUARE II LIMITED PARTNERSHIP,
PLUMLEY VILLAGE LLC,
PROJECT III HOUSING CORPORATION,
TCB CORKY ROW I LIMITED PARTNERSHIP,
TCB FRANKLIN PARK LIMITED PARTNERSHIP,
TCB LM 2 LIMITED PARTNERSHIP,
TCB NIAGARA LIMITED PARTNERSHIP,
WESTFIELD 202, INC.,
WORCESTER LOFTS LIMITED PARTNERSHIP,
95 Berkeley Street,
Boston, Massachusetts

CENTRAL GRAMMAR LIMITED PARTNERSHIP
28 Dale Avenue,
Gloucester, Massachusetts

PARK WEST RESIDENTS ASSOCIATION, INC.
178-B Terrace Drive,
Vernon, Connecticut

PUERTA DE LA ESPERANZA LLC
401 Main Street
Holyoke, Massachusetts

SOUTH CANAL LIMITED PARTNERSHIP
70 Federal Street,
Boston, Massachusetts

RECEIVED

AUG 26 2008

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Office of Regional Hearing Clerk

RESPONDENT'S
ANSWER TO
ADMINISTRATIVE
COMPLAINT

Docket No.
TSCA-01-2008-0079

SOUTH CITY HOUSING LIMITED PARTNERSHIP,)
SOUTH HOLYOKE LIMITED PARTNERSHIP)
562 South Summer Street,)
Holyoke, Massachusetts)
)
SOUTH SUMMER STREET ASSOCIATES)
LIMITED PARTNERSHIP)
550 South Summer Street,)
Holyoke, Massachusetts)
)
VERANO APARTMENTS LIMITED)
PARTNERSHIP)
322 Main Street, Suite 1,)
Springfield, Massachusetts)
)
Respondents.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
)

RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT

The Community Builders, Inc. ("TCB"), et al., in response to the Administrative Complaint ("Complaint") filed by the United States Environmental Protection Agency ("EPA") in this action, hereby answer as follows. The term "Respondent," as used in paragraphs 1-211 below, refers only to the entity or entities, as appropriate, listed in or which is a subject of each of the corresponding paragraphs of the Complaint. To the extent a response to any allegation is deemed required by any other entity otherwise named as a Respondent, all such allegations are denied.

STATUTORY AND REGULATORY BACKGROUND

1 – 2. The allegations in paragraphs 1 and 2 of the Complaint do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

NATURE OF THE ACTION

3 – 9 The allegations of paragraphs 3 through 9 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

GENERAL ALLEGATIONS

10 – 28. Respondent admits the allegations of paragraphs 10 through 28 of the Complaint.

29. Respondent admits the allegations of paragraph 29, except with regard to the principal place of business address, which is denied. The principal place of business for South Canal Limited Partnership is 344 Main Street, Holyoke, MA 01040.

30. Respondent admits the allegations of paragraph 30 of the Complaint.

31. Respondent admits the allegations of paragraph 31 of the Complaint, except with regard to the name of the entity, which is denied. Respondent's name is South Holyoke Housing Limited Partnership.

32 – 33 Respondent admits the allegations of paragraphs 32 and 33 of the Complaint.

34. The allegations in paragraph 34 are denied.

35 – 36. The allegations in paragraphs 35 and 36 are denied.

37. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 37, and therefore denies them.

38. Respondent denies the violations, and otherwise admits the allegations of paragraph 38 of the Complaint.

39. Respondent admits the allegations of paragraph 39 of the Complaint.

40. Respondent admits that it received a subpoena from EPA in January, 2006.

Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 40, and therefore denies them.

41. Respondent admits the allegations of paragraph 41 of the Complaint.

ALLEGED VIOLATIONS

42. The allegations in paragraph 42 of the Complaint do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in this paragraph.

43. Respondent incorporates its responses to paragraphs 1-42 of the Complaint.

44. The allegations of paragraph 44 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in this paragraph.

45. Respondent admits that the individuals listed in subparagraphs (a)-(t) were or are currently tenants of TCB and Churchill Homes II Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the remaining allegations, and therefore denies them, except with regard to subparagraphs (a), (b), (k), and (s), which are denied.

46. Respondent admits that the individuals listed in subparagraphs (a)-(bbbb) were or are currently tenants of TCB and Cinque Green Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of

paragraph 46, and therefore denies them, except with regard to subparagraphs (a), (c), (g), (y), (yy), and (www), which are denied.

47. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and Chauncy House Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 47, and therefore denies them.

48. Respondent admits that the individuals listed in subparagraphs (a)-(d) were or are currently tenants of TCB and Central Grammar Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 48, and therefore denies them, except with regard to subparagraph (a), which is denied.

49. Respondent admits that the individuals listed in subparagraphs (a)-(r) were or are currently tenants of TCB and Kensington Square I Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 49, and therefore denies them.

50. Respondent admits that the individuals listed in subparagraphs (a)-(o) were or are currently tenants of TCB and Franklin School Housing Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 50, and therefore denies them.

51. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and TCB Franklin Park Limited Partnership. Respondent lacks

knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 51, and therefore denies them.

52. Respondent admits that the individuals listed in subparagraphs (a)-(c) were or are currently tenants of TCB and Westfield 202, Inc. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 52, and therefore denies them.

53. Respondent admits that the individuals listed in subparagraphs (a)-(s) were or are currently tenants of TCB and Dartmouth TCB Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 53, and therefore denies them.

54. Respondent admits that the individuals listed in subparagraphs (a)-(d) were or are currently tenants of TCB and Corky Row I Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 54, and therefore denies them.

55. Respondent admits that the individuals listed in subparagraphs (a)-(p) were or are currently tenants of TCB and Kensington Square II Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 55, and therefore denies them.

56. Respondent admits that Maximo Ceballos was or is currently a tenant of TCB and TCB LM 2 Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 56, and therefore denies them.

57. Respondent admits that the individuals listed in subparagraphs (a)-(c) were or are currently tenants of TCB and TCB Niagara Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 57, and therefore denies them.

58. Respondent admits that the individuals listed in subparagraphs (a)-(f) were or are currently tenants of TCB and Worcester Lofts Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 58, and therefore denies them.

59. Respondent admits that the individuals listed in subparagraphs (a)-(ll) were or are currently tenants of TCB and Park West Residents Association, Inc. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 59, and therefore denies them, except with regard to the allegations in subparagraphs (b), (t), and (ii), which are denied.

60. Respondent admits that the individuals listed in paragraph 60 were tenants of TCB and South City Housing Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 60, and therefore denies them.

61. Respondent admits that the individuals listed in subparagraphs (a)-(g) were or are currently tenants of TCB and Plumley Village, LLC. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 61, and therefore denies them.

62. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and Project III Housing Corporation. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 62, and therefore denies them.

63. Respondent admits that the individuals listed in subparagraphs (a)-(e) were tenants of TCB and South Canal Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 63, and therefore denies them.

64 - 83. The allegations of paragraphs 64 through 83 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

SECOND COUNT

84. Respondent incorporates its responses to paragraphs 1-83 of the Complaint.

85 – 86. The allegations of paragraphs 85 and 86 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

87. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and Churchill Homes II Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 87, and therefore denies them, except with regard to the allegations in subparagraph (a), which are denied.

88. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 88, and therefore denies them.

89. Respondent admits that the individuals listed in subparagraphs (a)-(n) were or are currently tenants of TCB and Kensington Square I Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 89, and therefore denies them.

90. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 90, and therefore denies them.

91. Respondent admits that the individuals listed in subparagraphs (a)-(c) were or are currently tenants of TCB and Franklin Park Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 91, and therefore denies them.

92. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 92, and therefore denies them.

93. Respondent admits that the individuals listed in subparagraphs (a)-(d) were or are currently tenants of TCB and Corky Row I Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 93, and therefore denies them.

94. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 94, and therefore denies them.

95. Respondent admits that the individuals listed in subparagraphs (a)-(j) were or are currently tenants of TCB and Kensington Square II Limited Partnership. Respondent

lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 95, and therefore denies them.

96. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 96, and therefore denies them.

97. Respondent admits that the individual listed paragraph 97 is or was a tenant of TCB and TCB LM 2 Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 97, and therefore denies them.

98. Respondent admits the allegations of paragraph 98 of the Complaint.

99. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and TCB Niagara Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 99, and therefore denies them.

100. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 100, and therefore denies them.

101. Respondent admits that the individuals listed in subparagraphs (a)-(f) were or are currently tenants of TCB and Worcester Lofts Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 101, and therefore denies them.

102. Respondent admits the allegations of paragraph 102 of the Complaint.

103 – 111. The allegations of paragraphs 103 through 111 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

THIRD COUNT

112 Respondent incorporates its responses to paragraphs 1-111 of the Complaint.

113. The allegations of paragraph 113 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in this paragraph.

114. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 114, and therefore denies them, except with regard to the allegations in subparagraphs (a), (b), and (k), which are denied.

115. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 115, and therefore denies them, except with regard to the allegations in subparagraphs (a), (c), (g), (y), (yy), and (www), which are denied.

116. – 127. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraphs 116 through 127, and therefore denies them.

128. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 128, and therefore denies them, except with regard to the allegations in subparagraphs (b) and (ii), which are denied.

129. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 129, and therefore denies them.

130. Respondent lacks knowledge or information sufficient to admit or deny the allegations in the first sentence of paragraph 130, and therefore denies them. In response to the second sentence, Respondent admits that the individuals listed in subparagraphs (a)-(x) were or are currently tenants of TCB and Plumley Village LLC. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 130, and therefore denies them, with the exception of subparagraphs (b), (c), (d), (e), and (k), which are denied.

131. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 131, and therefore denies them.

132. Respondent admits that the individuals listed in subparagraphs (a)-(e) were or are currently tenants of TCB and South Canal Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 132, and therefore denies them, with the exception of subparagraph (b), which is denied.

133 – 152. The allegations of paragraphs 133 through 152 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

FOURTH COUNT

153. Respondent incorporates its responses to paragraphs 1-152 of the Complaint.

154. The allegations of paragraph 154 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in this paragraph.

155. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 155, and therefore denies them, except with regard to subparagraphs (a), (b), (k), and (s), which are denied.

156. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 156, and therefore denies them, except with regard to subparagraphs (a), (c), (g), (y), (yy), and (www), which are denied.

157. – 165. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraphs 155 through 165, and therefore denies them.

166. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and TCB LM 2 Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 166, and therefore denies them.

167 – 168. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraphs 167 through 168, and therefore denies them.

169. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 169, and therefore denies them, except with regard to the allegations in subparagraphs (b), (t), and (ii), which are denied.

170. Respondent admits that the individuals listed in subparagraphs (a)-(g) were tenants of TCB and South City Housing Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 170, and therefore denies them, except with regard to the allegations in subparagraphs (a), (b), and (c), which are denied.

171. Respondent lacks knowledge or information sufficient to admit or deny the allegations in the first sentence of paragraph 171, and therefore denies them. In response to the second sentence, Respondent admits that the individuals listed in subparagraphs (a)-(i) were or are currently tenants of TCB and Plumley Village LLC. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 171, and therefore denies them.

172. Respondent lacks knowledge or information sufficient to admit or deny the allegations of paragraph 172, and therefore denies them.

173. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and Puerta de la Esperanza LLC. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 173, and therefore denies them.

174. Respondent lacks knowledge or information sufficient to admit or deny the allegations in the first sentence of paragraph 174, and therefore denies them, except with regard to the allegations of subparagraph (b), which are denied. In response to the second sentence, Respondent admits that the individuals listed in subparagraphs (a)-(g) were tenants of TCB and South Canal Limited Partnership. Respondent lacks knowledge or information sufficient to admit or deny the allegations of the remainder of paragraph 174, and therefore denies them, except with regard to the allegations of subparagraphs (a), (b), (c), (e), (f) and (g), which are denied.

175. The allegations in paragraph 175 are denied.

176. Respondent admits that the individuals listed in subparagraphs (a)-(b) were or are currently tenants of TCB and South Summer Street Associates Limited Partnership.

Respondent denies the remainder of the allegations of paragraph 176.

177. The allegations in paragraph 177 are denied

178 – 201. The allegations of paragraphs 178 through 201 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

PROPOSED PENALTY

202. The allegations of paragraph 202 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in this paragraph.

203. Respondent admits the allegations of paragraph 203 of the Complaint, with the exception of the last sentence of that paragraph, which is denied.

204. The allegations of paragraph 204 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in this paragraph.

205 – 208. The allegations in paragraphs 205 through 208 the Complaint do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

209. The allegations of paragraph 209 of the Complaint are legal contentions and do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in this paragraph.

210 -211. The allegations in paragraphs 210 and 211 the Complaint do not require a response. To the extent a response is deemed necessary, Respondent denies all allegations in these paragraphs.

AFFIRMATIVE DEFENSES

First Affirmative Defense

212. Complainant has included a minimum of twelve (12) duplicative allegations in the Complaint for which Respondent should not be held responsible. Respondent reserves the right to raise this defense in the future if it discovers additional duplicative entries.

Second Affirmative Defense

213. Not all Respondents captioned in the Complaint were “lessor[s]” as defined in 40 C.F.R. §745.103 at the time of the violations alleged in the Complaint.

Third Affirmative Defense

214. Not all apartment units associated with the properties referred to in Paragraph 35 of the Complaint are or were, at the time of the violations alleged in the Complaint, “target housing,” as defined in 40 C.F.R. §745.103.

Fourth Affirmative Defense

215. Respondent TCB did not serve as “agent,” as defined in 40 C.F.R. §745.103, for all other captioned Respondents at the time of the violations alleged in the Complaint.

Fifth Affirmative Defense

216. Complainant has failed to show prima facie elements necessary to carry its burden of proof that Respondent violated the Disclosure Rule.

MITIGATING FACTORS

1. The term “Respondent” in paragraphs 1-20 of this section refers to all entities captioned in the Complaint, unless otherwise indicated.
2. Penalty amounts for violations of 40 C.F.R. §745 (the “Disclosure Rule”) are calculated in two stages. The first stage determines the overall “seriousness” of a violation, by combining the “nature,” “circumstance” and “extent” of the violation using EPA’s Gravity Based Penalty Matrix (“GBP”). See EPA’s Disclosure Rule Enforcement Response Policy, p. 9. The resulting penalty amount is then adjusted upward or downward based on a violator’s ability to pay, degree of culpability, and other factors. See Id.

Penalty Calculation Based on the GBP: Violation Circumstance

3. The “primary confirmation tool...in ensuring full compliance with the regulatory requirements” set forth in 40 C.F.R §745 is evidence, such as the presence of a lead warning statement, showing that disclosure of potential lead risks was made by the lessor, and that such risks were acknowledged by the lessee. See 61 Fed. Reg. 9072 (March 6, 1996).
4. Based on the presence of such evidence in the form of disclosure/acknowledgment language in leases and tenant certification documents

associated with Chauncy House Limited Partnership, Churchill Homes II Limited Partnership, Cinque Green Limited Partnership, Dartmouth TCB Limited Partnership, TCB LM2 Limited Partnership, Niagara Limited Partnership, Franklin Park Limited Partnership, Franklin School Housing Limited Partnership, Kensington Square I Limited Partnership, Kensington Square II Limited Partnership, Plumley Village LLC, Project III Housing Corporation, Worcester Lofts Limited Partnership, Park West Resident's Association, Inc., Puerta De La Esperanza LLC, South City Housing Limited Partnership, South Holyoke Limited Partnership, South Summer Street Associates Limited Partnership, Verano Apartments Limited Partnership, and South Canal Limited Partnership, Respondent believes that it provided the required disclosures and warnings to a majority of the tenants listed in the Complaint. However, Respondent admits that it has not been able to locate full copies of all disclosure records and attachments associated with many of the leases in the Complaint.

5. In determining the gravity of a violation of the Disclosure Rule, and the amount of the resulting penalty, the "circumstances of the violation" are first considered. EPA's Disclosure Rule Enforcement Response Policy Circumstance Level Matrix categorizes a failure to retain a copy of completed disclosure records for three years from the completion date of the lease pursuant to 40 C.F.R. §745.113(c) as a "Level 6" violation. This violation carries the smallest maximum penalty of all circumstance levels, and has the least probability of resulting in harm. Whether or not a violation is likely to result in harm is measured by the effect that the violation has on a "lessee's ability to properly assess and weigh the factors associated with human health risk when...leasing target housing." See Disclosure Rule Enforcement Response Policy, p. 10. A "Level 6"

violation has “only low impact on the ability [of a lessee] to assess the information required to be disclosed.” Id.

6. Each requirement of the Disclosure Rule is a “separate and distinct requirement,” with a penalty assessed for each individual count. See EPA’s Disclosure Rule Enforcement Response Policy, pp. 12-13. This regulatory arrangement suggests that there may be circumstances where a party could violate the record keeping requirement, without violating any of the other requirements of the Disclosure Rule.

7. As discussed in paragraph 4 of this section, Respondent has discovered disclosure/acknowledgment language in documents associated with twenty (20) of the properties listed in the Complaint, which have a combined total of 802 counts associated with them. Based on the presence of disclosure/acknowledgment language associated with the Leases and related documents of a majority of the properties listed in the Complaint, Respondent believes that it has violated only the record-keeping requirement of the Disclosure Rule with regard to these properties. Therefore, a circumstance level of 6 is appropriate for the 802 allegations related to these properties.

Penalty Calculation Based on the GBP: Violation Extent

8. The second step in determining the gravity of a violation of the Disclosure Rule and the resulting amount of the penalty is consideration of the “extent” of the violation. When evaluating the extent, the overall intent of the Disclosure Rule, which is to prevent childhood lead poisoning, serves as a guide in the calculation. See Disclosure Rule Enforcement Response Policy, p. 10. EPA’s Disclosure Rule Enforcement Response Policy Extent Category Matrix defines what constitutes a “major,” “significant” or

“minor” violation in the extent calculation. A “major” violation has the potential for “serious” damage to human health, and in the context of the Disclosure Rule, takes place when a pregnant woman or a child under 6 years of age is present in the target housing in question. See Guidelines for the Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy. A “significant” violation occurs when there is the potential for a “significant” amount of damage to human health, and occurs in the context of the Disclosure Rule when a child over 6 years of age – 18 years of age is present. Id. Finally, a “minor” violation is one having the potential for a “lesser amount of damage” to human health, and occurs in the context of the Disclosure Rule where the occupants of target housing are over 18 years of age. Id.

9. Respondent believes that currently, out of the 839 total violations alleged in the Complaint, one hundred and eighty six (163) of the units in question housed a child under the age of six, and one hundred sixty nine (169) of the apartments in question housed a child between the ages of 6-18. Respondent currently believes the remaining five hundred seven (507) alleged violations occurred in apartments housing persons aged 18 or older. Accordingly, the appropriate extent designation for violations associated with the majority of the above referenced violations should be minor.

Penalty Calculation Based on the GBP: Adjustment Factors

EPA Small Business Policy

10. All Respondents, with the exception of TCB and Westfield 202, Inc., are small for-profit entities with limited financial resources. TCB and Westfield 202, Inc. are non-profit entities, with similarly limited financial resources. Upon information and belief, all of these entities, with the exception of TCB and Franklin Park Limited Partnership, have

fewer than 100 employees and meet the criteria of the EPA's Small Business Policy. They will therefore be eligible to participate in the compliance assistance program for small businesses, and eligible for elimination of the entirety of any proposed civil penalty.

Ability to Pay/Continue Business

11. 15 U.S.C. §2615 requires that a violator's ability to pay a proposed civil penalty be considered as a factor in determining whether a gravity based penalty should be adjusted downward. Complainant seeks to assess civil penalties of "up to \$11,000 per violation" against Respondents for the violations alleged in the Complaint. See Complaint ¶ 204. These proposed penalty amounts are far beyond the financial means of Respondent. See Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, 45 FR 59771 (1980) (stating that EPA generally will not impose penalties beyond the financial means of the violator).

12. Respondent TCB is a non-profit organization with limited financial means and highly leveraged resources. TCB's properties themselves generally produce very little income, and are typically built and operated on thin margins, as rental streams generated by low-income residents are typically insufficient to support the property, and available subsidies are scarce. TCB has financial information to support these allegations, and is willing to share this information with Complainant.

13. The ability to pay/continue in business factor should weigh heavily in favor of Respondent TCB. Respondent makes low income housing available in the economically challenged communities in which it operates. Consistent with its non-profit status, TCB

has not experienced any financial gain or advantage as a result of any violation that may have occurred.

Other Factors as Justice May Require: Lead Free Status

14. The EPA Disclosure Rule Enforcement Response Policy allows for the downward adjustment of a gravity based penalty of 80% “if the responsible party provides EPA with appropriate documentation that the target housing is certified to be lead-based paint free by an accredited inspector.” See EPA’s Disclosure Rule Enforcement Response Policy, p.

15. Respondent has such documentation stating that properties managed by Park West Resident’s Association, Inc., Niagara Limited Partnership and Plumley Village LLC are in full deleading compliance. Accordingly, any penalty for the alleged violations associated with these three properties should be reduced by 80% based on this showing of compliance.

Lead-Hazard Free Status

16. Further, properties owned by Cinque Green Limited Partnership, Churchill Homes II Limited Partnership, Project III Housing Corporation, Chauncy House Limited Partnership and at least portions of Worcester Lofts Limited Partnership and TCB Corky Row I Limited Partnership underwent a risk assessment and were found to be lead-hazard free. Because the risk of exposure to lead in certified lead-hazard free housing is minimal, a downward adjustment is appropriate for the alleged violations associated with these properties.

Attitude and Cooperation

17. The EPA Disclosure Rule Enforcement Response Policy allows for the downward adjustment of a gravity based penalty of up to 30% upon Respondent's showing of cooperation, expedient good faith efforts to comply with the Disclosure Rule, and willingness to reach settlement early in the litigation. See Id. p. 16. Respondent TCB submits that, since receipt of the EPA subpoena in 2006, it has made consistent good faith efforts to cooperate fully with EPA, and will continue to do so. Respondent has demonstrated a willingness to quickly bring its properties into compliance with the Disclosure Rule, and assure that future violations do not occur. Finally, Respondent has made, and will continue to make, good faith efforts to settle this case. Therefore, any potential penalty imposed for the violations alleged in the Complaint should be adjusted downward.

18. The duty to cooperate of all other Respondents was triggered when the Complaint was filed. Those Respondents stand ready to enter settlement discussions with EPA in good faith, and, to the extent there are any instances in which they are not already in compliance, to take expedient steps to comply with the Disclosure Rule.

Supplemental Environmental Project

19. Respondent TCB is willing to perform a Supplemental Environmental Project ("SEP") to offset any potential penalty assessed for the violations alleged in the Complaint.

REQUEST FOR HEARING

Respondent requests a hearing upon the issues raised in the Complaint.

Respectfully Submitted,
The Community Builders, Inc. et al.
By its attorneys,


Jamie C. Beard (BBO #671077)
Robert C. Kirsch (BBO #541755)
Wilmer Cutler Pickering Hale and
Dorr LLP
60 State Street
Boston, MA 02109
(617) 526-6000

In re: The Community Builders, Inc. et al.
EPA Docket No. TSCA-01-2008-0079

CERTIFICATE OF SERVICE

I, Jamie C. Beard, Esq. hereby certify that on this 26th day of August 2008, I caused a copy of the foregoing to be served on the following:

Original and One Copy By Hand Delivery

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

One Copy By Certified Mail

Hugh W. Martinez
Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023



Jamie C. Beard (BBO #671077)
Wilmer Cutler Pickering Hale
and Dorr LLP
60 State Street
Boston, MA 02109
(617) 526-6000