



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

May 6, 2010

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: John C. Jones
Docket No. TSCA-01-2010-0035

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: John C. Jones

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

IN THE MATTER OF:)

JOHN C. JONES)
102 Cedar Street)
Roxbury, Massachusetts 02119)

Respondent.)
_____)

2010 MAY -6 A 2:19
Docket No. TSCA-01-2010-0035
REGIONAL HEARING CLERK

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

I. STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for Administrative 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, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1.

II. NATURE OF THE ACTION

2. The Respondent in this action, John C. Jones (“Respondent” or “Mr. Jones”), is hereby notified of the Complainant’s determination that he has violated TSCA Section 409, 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 federal regulations promulgated thereunder, entitled “Disclosure of Known



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2010 MAY -6 A 2:19
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REGISTRATION CLERK

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FOR ADMINISTRATIVE HEARING

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Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property,” set forth in 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Complainant seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409 are subject to the assessment by Complainant of civil penalties. In support of its Complaint, Complainant alleges the following:

III. STATUTORY AND REGULATORY BACKGROUND

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 considered in the rental of homes and apartments.

4. In 1996, the United States Environmental Protection Agency (“EPA”) promulgated regulations to implement the Act. These regulations (the Disclosure Rule) are set forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act is termed “target housing.” “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled, or any 0-bedroom dwelling.

6. The Disclosure Rule requires sellers and lessors of target housing to, among other things:

a) provide to purchasers and lessees a lead hazard information pamphlet;

- b) disclose to purchasers and lessees the presence of any known lead-based paint and/or lead-based paint hazards prior to selling or leasing target housing;
- c) provide available records or reports pertaining to lead-based paint or lead-based paint hazards in the housing;
- d) ensure that the contract to lease or sell includes a Lead Warning Statement; and,
- e) ensure that the contract to lease or sell includes a statement by the lessor or seller disclosing the presence of known lead-based paint or lead-based paint hazards, or indicating no knowledge thereof.

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), failure to comply with the requirements of the Disclosure Rule is a violation of TSCA Section 409.

8. Section 16(a)(1) of 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.

9. 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. However, 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, penalties of up to \$11,000 are allowed for violations occurring between July 28, 1997, and January 12, 2009. Effective January 12, 2009, the maximum penalty per violation is \$16,000. 73 Fed. Reg. 75340-46 (December 11, 2008).

IV. GENERAL ALLEGATIONS

10. Respondent John C. Jones is a person who resides in Roxbury, Massachusetts.

11. At all times relevant to the allegations in this Complaint, Mr. Jones was the owner and/or manager of the following residential properties (collectively, the "Properties"): 20

Woodville Street, Roxbury, Massachusetts (a three-unit apartment building); a building with three entrances, addressed 48 Edgewater Street, 23 Southwood Street, and 25 Southwood Street, Roxbury, Massachusetts (a three-unit apartment building); and 176-180 Quincy Street, Dorchester, Massachusetts (a three-unit apartment building).

12. 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.

13. At all times relevant to the allegations in this Complaint, Mr. Jones offered for lease the rental units located at the Properties. Accordingly, Mr. Jones is a “lessor” as defined in 40 C.F.R. § 745.103.

14. On March 25, 2008, EPA Region 1 inspectors met with Mr. Jones to evaluate his compliance with the Disclosure Rule and another lead paint-related requirement, the Pre-Renovation Education Rule, found at 40 C.F.R. Part 745, Subpart E. At the inspection, the EPA inspectors notified Mr. Jones of the requirements of the Disclosure Rule, gave him a compliance assistance package that outlined the requirements and included samples of the required documents, and demonstrated how to fill out a lead disclosure form. After the inspection, the EPA inspectors mailed Mr. Jones a package including additional lead hazard information pamphlets and disclosure forms.

15. Because Mr. Jones did not bring all of the relevant documents with him to the inspection, EPA requested that he send EPA copies of seven leases from the preceding two years and all records and reports pertaining to lead-based paint that he had in this possession.

16. Because Mr. Jones failed to provide the requested documents after nearly five months and several attempts to contact him by telephone, on August 13, 2008, EPA Region 1 served him with a subpoena, identified as TSCA Subpoena No. TSCA-SP-2008-077 (the “Subpoena”), pursuant to Section 11(c) of TSCA, 15 U.S.C. § 2610(c). The Subpoena sought information necessary to assess Respondent’s compliance with the Disclosure Rule and the Pre-Renovation Education Rule at the Properties.

17. When Mr. Jones failed to respond to the Subpoena, EPA Region 1 sent a “Letter of Notice of Noncompliance and Potential for Further Enforcement,” which Mr. Jones received on November 3, 2008, informing him of the potential for enforcement of the Subpoena in federal court if EPA did not received a complete response.

18. On March 30, 2009, EPA Region 1 referred the matter to the U.S. Attorney’s Office for the District of Massachusetts, requesting assistance in compelling a response to the Subpoena. After repeated attempts by the U.S. Attorney’s Office and EPA to solicit a response, Mr. Jones finally submitted the requested information on May 21, 2009 and October 23, 2009.

19. In his subpoena responses, Mr. Jones provided some written answers to questions concerning the Properties, letters and certificates of compliance with lead inspection requirements for nine of the Properties, four leases, and portions of two housing assistance payments contracts. Respondent did not provide EPA with any documentation demonstrating compliance with the Disclosure Rule, and at the inspection he had indicated that he had no knowledge of and had not complied with the Disclosure Rule.

V. VIOLATIONS

20. EPA has identified the following violations of the Act and the Disclosure Rule based

on documents and information obtained from Respondent pursuant to the Subpoena and/or otherwise collected during EPA's investigation of this matter:

FIRST COUNT
Failure to Provide Lead Hazard Information Pamphlet

21. Paragraphs 1 through 20, above, are incorporated by reference as if fully set forth herein.

22. Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor is required to provide a lessee, before the lessee is obligated under any contract to lease target housing, with an EPA-approved lead hazard information pamphlet entitled "Protect Your Family From Lead in Your Home" or an equivalent pamphlet that has been approved for use in Massachusetts by EPA.

23. Respondent failed to provide the following tenants with an EPA-approved lead hazard information pamphlet before the tenants became obligated to lease the specific apartments indicated below:

- a) A tenant who became obligated to rent 20 Woodville Street # 3, Roxbury, Massachusetts on or about December 1, 2007;
- b) A tenant who became obligated to rent 48 Edgewater Street # 2, Roxbury, Massachusetts on or about April 1, 2007;
- c) A tenant who became obligated to rent 25 Southwood Street #1, Roxbury, Massachusetts on or about July 1, 2008; and
- d) A tenant who became obligated to rent 176-180 Quincy Street #2, Dorchester, Massachusetts on or about January 1, 2009.

24. Respondent's failure to provide lessees of target housing with an EPA-approved lead hazard information pamphlet prior to the lessees becoming obligated under a contract to lease target housing on four occasions constitutes four separate violations of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409, 15 U.S.C. § 2689.

25. Each of the above-listed instances of violation alleged in the First Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4825d(b)(5), and Section 16 of TSCA, 15 U.S.C. § 2615.

SECOND COUNT

Failure to Provide Records Pertaining to Lead-Based Paint/Hazards

26. Paragraphs 1 through 25, above, are incorporated by reference as if fully set forth herein.

27. Pursuant to 40 C.F.R. § 745.107(a)(4), 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. 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.

28. Respondent failed to provide the lessee referenced in Subparagraph 23(b), above, with records or reports pertaining to lead-based paint or lead-based paint hazards before that lessee entered into a contract to lease 48 Edgewater Street # 2, Roxbury, Massachusetts, on or about April 1, 2007.

29. At the time Respondent leased 48 Edgewater Street # 2, Roxbury, Massachusetts, to the lessee referenced in Subparagraph 23(b), above, the following information pertaining to lead-based paint and/or lead-based paint hazards in the rental unit was available to Respondent: notification of violations found during a comprehensive initial lead-based paint inspection

conducted on December 14, 1991.

30. Respondent failed to provide the lessee referenced in Subparagraph 23(c), above, with records or reports pertaining to lead-based paint or lead-based paint hazards before that lessee entered into a contract to lease 25 Southwood Street #1, Roxbury, Massachusetts, on or about July 1, 2008.

31. At the time Respondent leased 25 Southwood Street #1, Roxbury, Massachusetts, to the lessee referenced in Subparagraph 23(c), above, the following information pertaining to lead-based paint and/or lead-based paint hazards in the rental unit was available to Respondent: (a) notification of violations found during a comprehensive initial lead-based paint inspection conducted on March 11, 2005; and (b) a Post-Compliance Assessment Determination conducted on September 1, 2005.¹

32. Respondent's failure to provide records pertaining to lead-based paint and/or lead-based paint hazards to two lessees of target housing constitutes two violations of 40 C.F.R. § 745.107(a)(4), and TSCA Section 409.

33. Each of the above-listed instances of violation alleged in the Second Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA.

THIRD COUNT
Failure to Include Lead Warning Statement

34. Paragraphs 1 through 33, above, are incorporated by reference as if fully set forth

¹The lead inspector examined 23 Southwood Street #3, Roxbury, Massachusetts, another unit in the building, on the same visit and noted violations in areas common to both units.

herein.

35. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include a Lead Warning Statement within, or as an attachment to, the contract.

36. Respondent failed to include a Lead Warning Statement in, or attached to, his contracts with the lessees referenced in Subparagraphs 23(a), (b), and (c), above.

37. Respondent's failure to include a Lead Warning Statement in or attached to three lease contracts to lease target housing constitutes three separate violations of 40 C.F.R. § 745.113(b)(1) and TSCA Section 409.

38. Each of the above-listed instances of violation alleged in the Third Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA.

FOURTH COUNT

Failure to Include Disclosure Statement Regarding Lead-Based Paint/Hazards

39. Paragraphs 1 through 38, above, are incorporated by reference as if fully set forth herein.

40. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must 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 a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

41. Respondent failed to include a statement disclosing the presence of known lead-based

paint and/or lead-based paint hazards or a statement indicating no knowledge of the same in, or attached to, his contracts with the lessees referenced in Subparagraphs 23(a), (b), and (c), above.

42. Respondent's failure 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 in, or attached to, three lease contracts to lease target housing constitutes three separate violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409.

43. Each of the above-listed instances of violation alleged in the Fourth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA.

FIFTH COUNT

Failure to Include List of Records Pertaining to Lead-Based Paint/Hazards

44. Paragraphs 1 through 43, above, are incorporated by reference as if fully set forth herein.

45. Pursuant to 40 C.F.R. § 745.113(b)(3), a contract to lease target housing must include, as an attachment to or within the lease contract, 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 being leased that have been provided to the lessee or an indication that no such records or reports are available.

46. Respondent failed to include in, or attached to, his contracts with the lessees referenced in Subparagraphs 23(a) and (d), above, a list of the records or reports available to him

pertaining to lead-based paint and/or lead-based paint hazards, or to indicate that no such records exist.

47. Respondent's failure to include a list of the records or reports available to him pertaining to lead-based paint and/or lead-based paint hazards or indicate no knowledge of the same in, or attached to, two lease contracts to lease target housing constitutes two separate violations of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409.

48. Each of the above-listed instances of violation alleged in the Fifth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA.

VI. PROPOSED PENALTY

49. 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. Penalties of up to \$11,000 per violation may be assessed for violations occurring between July 28, 1997, and January 12, 2009, 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. 75340-46 (December 11, 2008).

50. In determining the amount of any penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. To assess a penalty for

the violations alleged herein, Complainant has taken into account 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* (“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 above-listed statutory penalty factors to specific cases.

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

Count	Regulation Violated	Description	Penalty
1	40 C.F.R. § 745.107(a)(1)	Failure to provide lead hazard information pamphlet	\$ 30,960
2	40 C.F.R. §§ 745.107(a)(2) and (4)	Failure to disclose lead-based paint/paint hazards and to provide reports	\$ 15,480
3	40 C.F.R. § 745.113(b)(1)	Failure to include lead warning statement in lease	\$ 19,350
4	40 C.F.R. § 745.113(b)(2)	Failure to include disclosure statement regarding lead-based paint/paint hazards in lease	\$ 15,480
5	40 C.F.R. § 745.113(b)(3)	Failure to include list of records pertaining to lead-based paint/hazards in lease	\$ 3,360
		Total	\$ 84,630

Rounded to the nearest \$ 100 per EPA policy, the cumulative proposed penalty for all violations alleged in this Complaint is \$ 84,600. The calculation of the proposed penalty is explained in further detail in Attachment 1 to this Complaint.

52. The proposed penalty may be adjusted if Respondent establishes *bona fide* issues of ability to pay or other defenses relevant to the appropriate amount of the penalty.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

53. 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 of the Consolidated Rules of Practice, the Respondent has a right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, at 40 C.F.R. Part 22, a copy of which is provided with this Complaint. **A request for a hearing must be incorporated into a written Answer. Respondent must file the original and one copy of the written Answer to this Complaint within thirty (30) days of receipt of this Complaint.**

54. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent 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 Respondent disputes, 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.

55. Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

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

Respondent shall serve copies of the Answer, and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Christine Foot, Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency-Region 1
5 Post Office Square Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

VIII. DEFAULT ORDER

56. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's 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 Respondent without further proceedings thirty (30) days after the default order becomes final.

IX. QUICK RESOLUTION

57. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondent has 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 the Treasurer, United States of America. Respondent should note on the check the docket number of this Complaint (EPA Docket No. TSCA-01-2010-0035). The check shall 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, notice of payment of the civil penalty and copies of the check should be forwarded to:

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

and

Christine Foot, Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency-Region 1
5 Post Office Square Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

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

X. SETTLEMENT CONFERENCE

59. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 1.

60. 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. To explore the possibility of settlement in this matter, Respondent should contact Christine Foot, Enforcement Counsel, Office of Environmental Stewardship, EPA Region 1, at the address cited above, at

(617) 918-1333, or at foot.christine@epa.gov. Ms. Foot has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.



Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

5/5/10
Date

ATTACHMENT #1
Proposed TSCA Penalty

The following provides the justification for the proposed penalty calculation in the administrative penalty action against John C. Jones (“Respondent” or “Mr. Jones”) that seeks \$84,600 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. However, 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, penalties of up to \$11,000 are allowed for violations occurring between July 28, 1997, and January 12, 2009. Effective January 12, 2009, the maximum penalty per violation is \$16,000. 73 Fed. Reg. 75340-46 (December 11, 2008).

The alleged violations of the Disclosure Rule are based upon documents and information obtained from Respondent pursuant to the Subpoena and/or otherwise collected during EPA’s investigation of this matter.

COUNT 1. Failure to Provide Lessees with an EPA-Approved Lead Hazard Information Pamphlet

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees an EPA-approved lead hazard information pamphlet. 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 by EPA.

Circumstance Level: Failure to provide a lessee an EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.107(a)(1), 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 Disclosure Rule Enforcement Response and Penalty Policy (“ERPP”), Appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERPP 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 warrants 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. Mr. Jones indicated that children live in each of the apartments addressed by the Complaint. In the absence of information regarding the ages of the children, EPA assumes that they are under the age of eighteen, warranting a *significant* extent factor.

COUNT 2. Failure to Provide to Lessee Any Records or Reports Available to Lessor Pertaining to Lead-Based Paint and/or 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: Failure 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 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 Disclosure Rule ERPP, Appendix B, a violation of 40 C.F.R. § 745.107(a)(4) is *a Level 1* violation.

Extent of Harm: The Disclosure Rule ERPP 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 warrants *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. Mr. Jones indicated that children live in each of the apartments addressed by the Complaint. In the absence of information regarding the ages of the children, EPA assumes that they are under the age of eighteen, warranting a *significant* extent factor.

COUNT 3. Failure to Include as an Attachment, or within a Contract to Lease Target Housing, the 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 contract, the Lead Warning Statement.

Circumstance Level: Failure to include the Lead Warning Statement in the language of the lease contract, or 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 Disclosure Rule ERPP, Appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

Extent of Harm: The Disclosure Rule ERPP 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 warrants 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. Mr. Jones indicated that children live in each of the apartments addressed by the Complaint. In the absence of information regarding the ages of the children, EPA assumes that they are under the age of eighteen, warranting a *significant* extent factor.

COUNT 4. Failure to Include in a Lease, or as an Attachment Thereto, a Statement by the Lessor Disclosing the Presence of Known Lead-Based Paint and/or Lead-Based Paint Hazards, or Lack of Knowledge Thereof

Provision Violated: 40 C.F.R. § 745.113(b)(2) requires that each contract to lease target housing include, as an attachment or within the lease contract, a statement by a 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 of knowledge of lead-based paint and/or lead-based paint hazards as an attachment, or within the contract to lease target housing, 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 Disclosure Rule ERPP, Appendix B, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

Extent of Harm: The Disclosure Rule ERPP 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 warrants 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. Mr. Jones indicated that children live in each of the apartments addressed by the Complaint. In the absence of information regarding the ages of the children, EPA assumes that they are under the age of eighteen, warranting a *significant* extent factor.

COUNT 5. Failure to Include in a Lease, or as an Attachment Thereto, a List of Any Records That Pertain to Lead-Based Paint and/or Lead-Based Paint Hazards or to Indicate That No Such List Exists

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

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, 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 Disclosure Rule ERPP, Appendix B, a violation of 40 C.F.R. § 745.113(b)(3) is a *Level 5* violation.

Extent of Harm: The Disclosure Rule ERPP 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 warrants 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. Mr. Jones indicated that children live in each of the apartments addressed by the Complaint. In the absence of information regarding the ages of the children, EPA assumes that they are under the age of eighteen, warranting a *significant* extent factor.

Address	Unit #	Lease Date	Children (ages)	Failure to provide lessee with an EPA-approved lead hazard information pamphlet, "Protect Your Family from Lead in the Home."	Failure to provide to lessee any records or reports available to the lessor pertaining to lead-based paint in the target housing.	Failure to include as an attachment or within the contract to lease target housing, a Lead Warning Statement. Provision Violated: 40 C.F.R. § 745.113(b)(1): Level 2	Failure to include as an attachment or within the contract, a statement disclosing the presence or no knowledge of lead based paint. Provision Violated: 40 C.F.R. § 745.113(b)(2): Level 3	Failure to include as an attachment or within the lease a list of records or that no such lists exists. Provision Violated: 40 C.F.R. § 745.113(b)(3): Level 5	Total
			Major	\$11,000	\$11,000	\$10,320	\$7,740	\$2,580	
	Penalty: w/ children <6		Significant	\$7,740	\$7,740	\$6,450	\$5,160	\$1,680	
	Penalty: w/ children >6 <18		Minor	\$2,580	\$2,580	\$1,550	\$770	\$260	
20 Woodville Street	3	12/01/07	ages unk	\$7,740		\$6,450	\$5,160	\$1,680	\$21,030
48 Edgewood Street	2	04/01/07	ages unk	\$7,740	\$7,740	\$6,450	\$5,160		\$27,090
25 Southwood Street	1	07/01/08	ages unk	\$7,740	\$7,740	\$6,450	\$5,160		\$27,090
176-180 Quincy Street	2	01/01/09	ages unk	\$7,740					\$9,420
Sub-total				\$30,960	\$15,480	\$19,350	\$15,480	\$3,360	\$84,630
								Total	\$84,630

In the Matter of: John Jones
Docket No. TSCA-01-2010-0035

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for Hearing has been provided 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 (with the Consolidated
Rules and Penalty Policy), by First
Class Mail, Return Receipt
Requested:

John C. Jones
102 Cedar Street
Roxbury, MA 02119

Dated: 5/6/10


Christine Foot, Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912
Phone: 617-918-1333
Fax: 617-918-0333
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