



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 7 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8918 0444

Frank J. Davis
623 Sunridge Court
Indianapolis, Indiana 46239

Dear Mr. Davis:

Enclosed is a Complaint, issued by the United States Environmental Protection Agency (U.S. EPA), Region 5, which alleges that you have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

I recommend that you carefully read and analyze the Complaint and the enclosed Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day that the violation continues constitutes a new violation for which additional penalties may be imposed.

As provided in the Complaint, if you would like to request a hearing to contest the facts alleged or the amount of the penalty, you must do so in your Answer to the Complaint. If you choose to request a hearing, you must file your Answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, within 30 days following service of this Complaint.

A copy of your Answer and Request for Hearing should be sent to Eileen Furey, Associate Regional Counsel (C-14J), at the above address. If you have any questions about this matter you may phone Ms. Furey at (312) 886-7950.

Failure to respond to this Complaint by specific Answer within 30 days of its receipt by you constitutes your admission of the allegations in the Complaint. Failure to respond to this Complaint may result in the issuance of a Default Order imposing the proposed penalties.

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. If you wish to request an informal conference for the purpose of settlement, please write to Estrella Calvo, Pesticides and Toxics Enforcement Section (DT-8J), at the above address, or you may telephone her at (312) 353-8931.

Sincerely,

Anthony J. Restaino
for Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

FRANK J. DAVIS)
INDIANAPOLIS, INDIANA)

RESPONDENT.)
_____)

Docket No. *TSCA-05-2007-0002*

COMPLAINT UNDER
SECTION 16 (a) OF THE
TOXIC SUBSTANCES
CONTROL ACT

RECEIVED
REGIONAL PESTICIDES
DIVISION
DEC - 7 AM 10: 31
llw

COMPLAINT

1. This is a civil administrative action issued under the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.

3. Respondent is Frank J. Davis, who resides at 623 Sunridge Court, Indianapolis, Indiana.

Statutory and Regulatory Background

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

sales. 42 U.S.C. § 4852d (Section 1018) requires the Administrator and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. On March 6, 1996, U.S. EPA and HUD promulgated regulations at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property” (Disclosure Rule), pursuant to 42 U.S.C. § 4852d.

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

7. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978.

8. 40 C.F.R. § 745.103 defines “lessor” as any individual that offers target housing for lease, rent, or sublease.

9. 40 C.F.R. § 745.103 defines “lessee” as any individual that enters into an agreement to lease, rent or sublease target housing.

10. 40 C.F.R. § 745.103 defines “seller” as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

11. 40 C.F.R. § 745.103 defines “purchaser” as any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

12. 40 C.F.R. § 745.100 requires, among other things, that a lessor of target housing complete the disclosure activities specified in 40 C.F.R. § 745.107 before a lessee is obligated under any contract to lease target housing.

13. 40 C.F.R. § 745.113(b) requires that each lease for target housing include as an attachment or within the lease itself a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

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

General Allegations

15. Paragraphs 1 through 14 are realleged and incorporated here by reference.

16. Between at least June 1, 2002 and March 30, 2004, Respondent owned the following residential rental properties located at the following addresses in Indianapolis, Indiana: 1838 Brookside Avenue, 2822 English Avenue, 3780 North Parker, 2039 Roosevelt Avenue, 402 South Rural, 815 North Rural, 725 North Sherman Drive, 2518 North Temple Avenue, 4506 E. Washington and 2140 East 34th Street (referred to individually as “Residential Rental Property” and collectively as the “Residential Rental Properties”).

17. Each Residential Rental Property was constructed prior to 1978.

18. Each Residential Rental Property and each rental unit within such property is “target housing” as defined in 40 C.F.R. § 745.103.

19. Because Respondent was not in attendance at the scheduled time and location, on April 29, 2005, representatives of U.S. EPA and HUD were unable to conduct the scheduled inspection at Frank J. Davis’ home office located at 623 Sunridge Court, Indianapolis, Indiana, to monitor compliance with Section 1018 and its implementing regulations found at 40 C.F.R. Part 745, Subpart F.

20. On May 3, 2005, U.S. EPA issued a Certified Request for Information Letter to Frank J. Davis at 623 Sunridge Court, Indianapolis, Indiana, to obtain the necessary information regarding Mr. Davis’ compliance with Section 1018 and its implementing regulations found at 40 C.F.R. Part 745, Subpart F. Mr. Davis never responded to the Certified Request for Information Letter.

21. On June 29, 2005, Complainant issued an administrative subpoena *duces tecum* (the “subpoena”) to Frank J. Davis, under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all agreements and lead-based paint disclosure documentation for rental and sales transactions at all properties owned and/or managed by Frank J. Davis from June 1, 2002. Despite oral assurances to the contrary, Mr. Davis did not respond to the administrative subpoena.

22. U.S. EPA, Region 5 sought enforcement of the subpoena by expedited referral to the United States Attorney for the Southern District of Indiana. On December 15, 2005, the U.S Attorney filed a Petition for Enforcement of the subpoena.

23. On January 6, 2006, U.S. EPA received Respondent’s response to the subpoena.

24. On August 12, 2003, September 19, 2003, and February 6, 2004, Respondent received notices from the Marion County Health Department regarding violations of Chapter 10 of the Code of the Health and Hospital Corporation of Marion County, Indiana at, respectively, the 4506 East Washington Street, 2822 English Avenue, and 725 North Sherman Drive properties. Each of the notices issued to the Respondent provided him with knowledge regarding the condition of his properties and the presence of lead-based paint and/or lead-based paint hazards.

25. Respondent, as owner and lessor of the Residential Rental Properties, offered for lease the Residential Rental Properties identified below, and entered into the following ten written rental agreements (“Rental Contracts”) with individuals on the dates indicated:

Address	Date of Lease
1838 Brookside Avenue	11/14/2003
2822 English Avenue	03/30/2004
3780 North Parker	08/22/2002
2039 Roosevelt Avenue	06/01/2003
402 South Rural	04/11/2003
815 North Rural	04/24/2003
725 North Sherman Drive	09/16/2002
2518 North Temple Avenue	08/01/2003
4506 East Washington	06/01/2002
2140 East 34 th Street	07/10/2002

26. Each of the ten Rental Contracts referenced in the table in paragraph 25, above, covered a term of occupancy greater than 100-days.

27. Respondent is “lessor,” as defined by 40 C.F.R. § 745.103, since he has offered the target housing referenced in paragraph 25, above, for lease.

28. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the Residential Rental Properties, became a “lessee,” as defined in 40 C.F.R. § 745.103, since he or she entered into a agreement to lease target housing.

29. Respondent, as the owner of target housing, transferred legal title to two of the Residential Rental Properties by entering into written sales agreements (“Sales Contracts”) with individuals on the dates indicated below:

Address	Date of Sale
1838 Brookside Avenue	04/15/2005
725 North Sherman Drive	05/17/2005

30. Respondent is “seller,” as defined by 40 C.F.R. § 745.103, since he has transferred legal title to target housing, referenced in the table in paragraph 29, above.

31. Each individual who entered into an agreement to purchase an interest in the target housing referenced in the table in paragraph 29 above, is a “purchaser,” as defined in 40 C.F.R. § 745.103.

32. On November 13, 2006, U.S. EPA advised Respondent by letter that U.S. EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. U.S. EPA asked Respondent to identify any factors Respondent thought U.S. EPA should consider before issuing the complaint. U.S. EPA asked Respondent to submit specific financial documents, if he believed U.S. EPA should consider information on Respondent’s ability to pay a penalty. If Respondent believed there were financial factors which bore on Respondent’s ability to pay a civil penalty, U.S. EPA asked Respondent to submit specific financial documents.

33. On November 14, 2006, Respondent received the pre-filing letter referenced in paragraph 32, above. Respondent has not claimed an inability to pay a penalty and did not provide facts or other information concerning an ability to pay a penalty.

34. The Chief of the Pesticides and Toxics Branch has determined that the Respondent has violated the Federal regulations regarding the disclosure of lead-based paint and/or lead-based

paint hazards, 40 C.F.R. Part 745, and therefore violated Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 1-10: Failure to Include a Lead Warning Statement in Rental Contracts

35. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

36. 40 C.F.R. § 745.113(b)(1) and 40 C.F.R. § 745.100 require, before a lessee is obligated under the contract to lease target housing, that the lessor include, within or as an attachment to each contract to lease target housing, a Lead Warning Statement with the following language:

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

37. Count 1: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the November 14, 2003 contract referenced in paragraph 25, above.

38. Count 2: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 2822 English Avenue, Indianapolis, Indiana, was obligated under the March 30, 2004 contract referenced in paragraph 25, above.

39. Count 3: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 3780 North Parker, Indianapolis, Indiana, was obligated under the August 22, 2002 contract referenced in paragraph 25, above.

40. Count 4: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 2039 Roosevelt Avenue, Indianapolis, Indiana, was obligated under the June 1, 2003 contract referenced in paragraph 25, above.

41. Count 5: Respondent failed to include, within or as an attachment to the contract, a

Lead Warning Statement before the lessee at 402 South Rural, Indianapolis, Indiana, was obligated under the April 11, 2003 contract referenced in paragraph 25, above.

42. Count 6: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 815 North Rural, Indianapolis, Indiana, was obligated under the April 24, 2003 contract referenced in paragraph 25, above.

43. Count 7: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the September 16, 2002 contract referenced in paragraph 25, above.

44. Count 8: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 2518 North Temple Avenue, Indianapolis, Indiana, was obligated under the August 1, 2003 contract referenced in paragraph 25, above.

45. Count 9: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 4506 East Washington, Indianapolis, Indiana, was obligated under the June 1, 2002 contract referenced in paragraph 25, above.

46. Count 10: Respondent failed to include, within or as an attachment to the contract, a Lead Warning Statement before the lessee at 2140 East 34th Street, Indianapolis, Indiana, was obligated under the July 10, 2002 contract referenced in paragraph 25, above.

47. Respondent's failure to include, within or as an attachment to each contract, a Lead Warning Statement, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 37 through 46, above, constitutes ten violations of 40 C.F.R. § 745.113(b)(1), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 11-12: Failure to Include a Lead Disclosure Statement in Rental Contracts

48. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

49. 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.100 require a lessor to include, within or as an attachment to each contract to lease target housing, a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, before a lessee is obligated under the contract to lease target housing. Additionally, 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.100 require that, before a lessee is obligated under a contract to lease target housing, a lessor must disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards.

50. Count 11: Respondent failed to include, within or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, before the lessee at 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the September 16, 2002 contract referenced in paragraph 25, above.

51. Count 12: Respondent failed to disclose additional available information concerning known lead-based paint and/or lead-based paint hazards before the lessee at 2822 English Avenue, Indianapolis, Indiana, was obligated under the March 30, 2004 contract referenced in paragraph 25, above.

52. Respondent's failure to include, within or as an attachment to each contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 50 through 51, above, constitutes two violations of 40 C.F.R. § 745.113(b)(2), 40 C.F.R.

§ 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 13-22: Failure to Include in Rental Contracts a List of Records or Statement that No Such Records Exist

53. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

54. 40 C.F.R. Part § 745.113(b)(3) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist, before a lessee is obligated under a contract to lease target housing.

55. Count 13: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the November 14, 2003 contract referenced in paragraph 25, above.

56. Count 14: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 2822 English Avenue, Indianapolis, Indiana, was obligated under the March 30, 2004 contract referenced in paragraph 25, above.

57. Count 15: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 3780 North Parker, Indianapolis, Indiana, was obligated under the August 22, 2002 contract referenced in paragraph 25, above.

58. Count 16: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 2039 Roosevelt Avenue, Indianapolis, Indiana, was obligated under the June 1, 2003 contract referenced in paragraph 25, above.

59. Count 17: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 402 South Rural, Indianapolis, Indiana, was obligated under the April 11, 2003 contract referenced in paragraph 25, above.

60. Count 18: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 815 North Rural, Indianapolis, Indiana, was obligated under the April 24, 2003 contract referenced in paragraph 25, above.

61. Count 19: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the September 16, 2002 contract referenced in paragraph 25, above.

62. Count 20: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at

2518 North Temple Avenue, Indianapolis, Indiana, was obligated under the August 1, 2003 contract referenced in paragraph 25, above.

63. Count 21: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 4506 East Washington, Indianapolis, Indiana, was obligated under the June 1, 2002 contract referenced in paragraph 25, above.

64. Count 22: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessee at 2140 East 34th Street, Indianapolis, Indiana, was obligated under the July 10, 2002 contract referenced in paragraph 25, above.

65. Respondent's failure to include, within or as an attachment to each contract to lease target housing, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 55 through 64, above, constitutes ten violations of 40 C.F.R. § 745.113(b)(3), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 23-32: Failure to Include Statement of Receipt of Lead Hazard Information and Pamphlet in Rental Contracts

66. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

67. 40 C.F.R. § 745.113(b)(4) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information

pamphlet before the lessee is obligated under a contract to lease target housing.

68. Count 23: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the November 14, 2003 contract referenced in paragraph 25, above.

69. Count 24: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 2822 English Avenue, Indianapolis, Indiana, was obligated under the March 30, 2004 contract referenced in paragraph 25, above.

70. Count 25: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 3780 North Parker, Indianapolis, Indiana, was obligated under the August 22, 2002 contract referenced in paragraph 25, above.

71. Count 26: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 2039 Roosevelt Avenue, Indianapolis, Indiana, was obligated under the June 1, 2003 contract referenced in paragraph 25, above.

72. Count 27: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and

(b)(3), and the lead hazard information pamphlet before the lessee at 402 South Rural, Indianapolis, Indiana, was obligated under the April 11, 2003 contract referenced in paragraph 25, above.

73. Count 28: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 815 North Rural, Indianapolis, Indiana, was obligated under the April 24, 2003 contract referenced in paragraph 25, above.

74. Count 29: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the September 16, 2002 contract referenced in paragraph 25, above.

75. Count 30: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 2518 North Temple Avenue, Indianapolis, Indiana, was obligated under the August 1, 2003 contract referenced in paragraph 25, above.

76. Count 31: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessee at 4506 East Washington, Indianapolis, Indiana, was obligated under the June 1, 2002 contract referenced in paragraph 25, above.

77. Count 32: Respondent failed to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and

(b)(3), and the lead hazard information pamphlet before the lessee at 2140 East 34th Street, Indianapolis, Indiana, was obligated under the July 10, 2002 contract referenced in paragraph 25, above.

78. Respondent's failure to include, within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 68 through 77, above, constitutes ten violations of 40 C.F.R. § 745.113(b)(4), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 33-42: Failure to Include Certifying Signatures in Rental Contracts

79. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

80. 40 C.F.R. § 745.113(b)(6) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before the lessee is obligated under a contract to lease target housing.

81. Count 33: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the November 14, 2003 contract referenced in paragraph 25, above.

82. Count 34: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 2822 English Avenue, Indianapolis, Indiana, was obligated under the March 30, 2004 contract referenced in paragraph 25, above.

83. Count 35: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 3780 North Parker, Indianapolis, Indiana, was obligated under the August 22, 2002 contract referenced in paragraph 25, above.

84. Count 36: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 2039 Roosevelt Avenue, Indianapolis, Indiana, was obligated under the June 1, 2003 contract referenced in paragraph 25, above.

85. Count 37: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 402 South Rural, Indianapolis, Indiana, was obligated under the April 11, 2003 contract referenced in paragraph 25, above.

86. Count 38: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 815 North Rural, Indianapolis, Indiana, was obligated under the April 24, 2003 contract referenced in paragraph 25, above.

87. Count 39: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the September 16, 2002 contract referenced in paragraph 25, above.

88. Count 40: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 2518 North Temple Avenue, Indianapolis,

Indiana, was obligated under the August 1, 2003 contract referenced in paragraph 25, above.

89. Count 41: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 4506 East Washington, Indianapolis, Indiana, was obligated under the June 1, 2002 contract referenced in paragraph 25, above.

90. Count 42: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 2140 East 24th Street, Indianapolis, Indiana, was obligated under the July 10, 2002 contract referenced in paragraph 25, above.

91. Respondent's failure to include, within or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the dates of such signature before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 81 through 90, above, constitutes ten violations of 40 C.F.R. § 745.113(b)(6), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 43-44: Failure to Include a Lead Warning Statement in Sale Contracts

92. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

93. 40 C.F.R. § 745.113(a)(1) and 40 C.F.R. § 745.100 require, before a purchaser is obligated under the contract to purchase target housing the seller to include, within or as an attachment to each contract to sell target housing, a Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce

permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

94. Count 43: Respondent failed to include, within or as an attachment to the sales contract, a Lead Warning Statement before the purchaser of 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the April 15, 2005 contract referenced in paragraph 29, above.

95. Count 44: Respondent failed to include, within or as an attachment to the sales contract, a Lead Warning Statement before the purchaser of 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the May 17, 2005 contract referenced in paragraph 29, above.

96. Respondent's failure to include, within or as an attachment to each sales contract, a Lead Warning Statement, before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 94 and 95, above, constitutes two violations of 40 C.F.R. § 745.113(a)(1), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 45-46: Failure to Include a Lead Disclosure Statement in Sale Contracts

97. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

98. 40 C.F.R. § 745.113(a)(2) and 40 C.F.R. § 745.100 require a seller to include, within or as an attachment to each contract to sell target housing, a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, before a purchaser is obligated under the contract to purchase target

housing. Additionally, 40 C.F.R. § 745.113(a)(2) and 40 C.F.R. § 745.100 require that, before a purchaser is obligated under a contract to purchase target housing, a seller must disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards.

99. Count 45: Respondent failed to include, within or as an attachment to the sale contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, before the purchaser of 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the April 15, 2005 contract referenced in paragraph 29, above.

100. Count 46: Respondent failed to disclose additional available information concerning known lead-based paint and/or lead-based paint hazards before the purchaser at 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the May 17, 2005 contract referenced in paragraph 29, above.

101. Respondent's failure to include, within or as an attachment to each sale contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 99 and 100, above, constitutes two violations of 40 C.F.R. § 745.113(a)(2), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 47-48: Failure to Include a List of Records or Statement that No Records Exist in Sale Contracts

102. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

103. 40 C.F.R. Part § 745.113(a)(3) and 40 C.F.R. § 745.100 require the seller to include, within or as an attachment to each contract to sell target housing, a list of any records or

reports available to the seller regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist, before a purchaser is obligated under a contract to purchase target housing.

104. Count 47: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the purchaser at 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the April 15, 2005 contract referenced in paragraph 29, above.

105. Count 48: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to him regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the purchaser at 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the May 17, 2005 contract referenced in paragraph 29, above.

106. Respondent's failure to include, within or as an attachment to each contract to sell target housing, a list of any records or reports available to the seller regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 104 and 105, above, constitutes two violations of 40 C.F.R. § 745.113(a)(3), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 49-50: Failure to Include Statement of Receipt of Lead Hazard Information and Pamphlet in Sales Contracts

107. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

108. 40 C.F.R. § 745.113(a)(4) and 40 C.F.R. § 745.100 require the seller to include, within or as an attachment to the contract, a statement by the purchaser affirming receipt of the

information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3), and the lead hazard information pamphlet before the purchaser is obligated under a contract to purchase target housing.

109. Count 49: Respondent failed to include, within or as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3), and the lead hazard information pamphlet before the purchaser of 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the April 15, 2005 contract referenced in paragraph 29, above.

110. Count 50: Respondent failed to include, within or as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3), and the lead hazard information pamphlet before the purchaser of 725 North Sherman, Indianapolis, Indiana, was obligated under the May 17, 2005 contract referenced in paragraph 29, above.

111. Respondent's failure to include, within or as an attachment to the contract, a statement by the seller affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (a)(3), and the lead hazard information pamphlet before the purchasers were obligated under the contracts for each of the sales transactions referenced in paragraphs 109 and 110, above, constitutes two violations of 40 C.F.R. § 745.113(a)(4), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 51-52: Failure to Include Statement Concerning Opportunity for Risk Assessment and/or Inspection in Sales Contracts

112. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

113. 40 C.F.R. § 745.113(a)(5) and 40 C.F.R. § 745.100 require that the seller must include, as an attachment to the contract, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or

waived the opportunity before a purchaser is obligated under a contract to buy target housing.

114. Count 51: Respondent failed to include, as an attachment to the contract, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity before the purchaser of 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the April 15, 2005 contract referenced in paragraph 29, above.

115. Count 52: Respondent failed to include, as an attachment to the contract, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity before the purchaser of 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the May 17, 2005 contract referenced in paragraph 29, above.

116. Respondent's failure to include, as an attachment to each contract, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity before the purchasers were obligated under the contracts referenced in paragraphs 114 and 115, above, constitutes two violations of 40 C.F.R. § 745.113(a)(5), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 53-54: Failure to Include Certifying Signatures in Sales Contracts

117. Paragraphs 1 through 34 of this Complaint are incorporated here by reference.

118. 40 C.F.R. § 745.113(a)(7) and 40 C.F.R. § 745.100 require the seller to include, within or as an attachment to the contract, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature, before the purchaser is obligated under a contract to purchase target housing.

119. Count 53: Respondent did not include, within or as an attachment to the contract, the signatures of the sellers, agent, and purchasers certifying to the accuracy of their statements, along with the dates of such signature, before the purchaser of 1838 Brookside Avenue, Indianapolis, Indiana, was obligated under the April 15, 2005 contract referenced in paragraph 29, above.

120. Count 54: Respondent did not include, within or as an attachment to the contract, the signatures of the sellers, agent, and purchasers certifying to the accuracy of their statements, along with the dates of such signature, before the purchaser of 725 North Sherman Drive, Indianapolis, Indiana, was obligated under the May 17, 2005 contract referenced in paragraph 29, above.

121. Respondent's failure to include, within or as an attachment to each contract, the signatures of the seller, agent, and purchaser certifying to the accuracy of their statements, along with the dates of such signatures, before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 119 and 120, above, constitutes two violations of 40 C.F.R. § 745.113(a)(7), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Proposed Civil Penalty

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, requires U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation occurring or continuing on or after January 31, 1997, through March 14, 2004; and \$32,500 per day for violations occurring on or after March 15, 2004. See 40 C.F.R. § 19 and

69 Fed. Reg. 7126 (February 13, 2004).

For purposes of determining the amount of civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires U.S. EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability and such other factors as justice may require.

The U.S. EPA calculates penalties through the application of U.S. EPA's "Section 1018-Disclosure Rule Enforcement Response Policy," dated February 2000 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether or not to lease the housing or take appropriate measures to protect against lead-based paint hazards. The most severe consequence of failing to disclose this information is a greater likelihood that a child will be exposed to lead-based paint hazards, and eventually be poisoned by lead.

Factors relevant to assessing an appropriate penalty include evidence demonstrating the presence of young children or pregnant women in these units at the time of the violation, information pertaining to a Respondent's ability to pay a civil administrative penalty, and any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

As stated in paragraphs 32 and 33, above, Respondent was asked to advise U.S. EPA of

any factors Respondent thought U.S. EPA should consider before issuing the complaint and, if Respondent believed there were financial factors which bore on Respondent's ability to pay a penalty, to provide U.S. EPA with specific financial documents.

Based upon an evaluation of the facts alleged in this complaint, the statutory factors enumerated above, and the Response Policy, Complainant proposes the Administrator assess the following civil penalties against Respondent for the violations alleged in this complaint:

COUNT 1

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,320

COUNT 2

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,547

COUNT 3

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$8,800

COUNT 4

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,320

COUNT 5

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,320

COUNT 6

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,320

COUNT 7

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,320

COUNT 8

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,320

COUNT 9

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$1,320

COUNT 10

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(1).....\$5,500

COUNT 11

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(2).....\$660

COUNT 12

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(2).....\$774

COUNT 13

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

COUNT 14

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(3).....\$258

COUNT 15

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(3).....\$2,200

COUNT 16

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

COUNT 17

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

COUNT 18

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

COUNT 19

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

COUNT 20

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

COUNT 21

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

COUNT 22

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(3).....\$1,430

COUNT 23

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$440

COUNT 24

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$516

COUNT 25

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$4,400

COUNT 26

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$440

COUNT 27

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$440

COUNT 28

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$440

COUNT 29

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$440

COUNT 30

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$440

COUNT 31

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$440

COUNT 32

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$2,750

COUNT 33

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 34

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 35

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$1,100

COUNT 36

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 37

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 38

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 39

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 40

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 41

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$110

COUNT 42

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$550

COUNT 43

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(1).....\$1,547

COUNT 44

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(1).....\$1,547

COUNT 45

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(2).....\$774

COUNT 46

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(2).....\$774

COUNT 47

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(3).....\$258

COUNT 48

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(3).....\$258

COUNT 49

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(4).....\$516

COUNT 50

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(4).....\$516

COUNT 51

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(5).....\$516

COUNT 52

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(5).....\$516

COUNT 53

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(7).....\$129

COUNT 54

42 U.S.C. § 4852d
40 C.F.R. § 745.113(a)(7).....\$129

Proposed Gravity-Based Civil Penalty..... \$52,724

Rules Governing this Proceeding

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), at 40 C.F.R. Part 22, govern this civil administrative penalty proceeding. Enclosed with this complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

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

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Eileen Furey to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Furey at (312) 886-7950. Her address is:

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

Penalty Payment

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

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk, Ms. Furey, and to:

Estrella Calvo, PTES (DT-8J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Opportunity to Request a Hearing

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in their answer, as described below.

Answer

Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends

that Respondent is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above, and must serve copies of the written answer with Eileen L. Furey at the address specified above. If Respondent chooses to file a written answer to the complaint, Respondent must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or Federal legal holiday the time period extends to the next business day.

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

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

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

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

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Eileen L. Furey, at the address above or you may telephone her at (312) 886-7950.

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

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

By: Anthony S. Restaino Dated 12/4/06
for Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

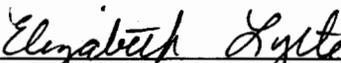
TSCA-05-2007-0002



CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Complaint involving **Frank J. Davis**, Indianapolis, Indiana, was filed on December 7, 2006, with the Regional Hearing Clerk (E-13J) U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true and correct copy was sent by Certified Mail, Receipt No. 7001 0320 0005 8918 0444, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Frank J. Davis
623 Sunridge Court
Indianapolis, Indiana 46239



Elizabeth Lytle/DT-8J
Pesticides and Toxics Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2007-0002



RECEIVED
REGIONAL HEARING CLERK
U.S. EPA
7 AM 10: 31
DEC -7 2006