

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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In the Matter of: ) Docket No. TSCA-05-2007-0013  
)  
Edward L. Murray, Jr. ) Proceeding to Assess a Civil Penalty  
Indianapolis, Indiana, ) Under Section 16(a) of the Toxic  
) Substance Control Act  
Respondent. )  
\_\_\_\_\_ )

**RESPONDENT, EDWARD L. MURRAY, JR.'S**  
**PRE-HEARING EXCHANGE**

Comes now Respondent, Edward L. Murray, Jr., by counsel, pursuant to the Court's Pre-Trial Hearing Order and Order Granting Respondent's Motion for Extension of Time, and for his pre-trial exchange, states:

A. **Expected Witnesses and Testimony.**

1. Edward L. Murray, Jr., Respondent. Mr. Murray is expected to testify regarding his rental operations, the nature and extent of tenancy of the subject properties, and the completion of the required and appropriate documentation as required by the Section 8 Housing Authority.
2. Current and former tenants at the subject properties including, but not limited to: Kimberly Aubrey, John Taylor, Barbara Harris, Jennifer Edwards, Beverly Grant, Jimmy Williams, Terry Catlett, Deutch Paicely, Dena Bates, Emma Fitts, James Averitte, Sr. and Donna Adair. These current and former tenants are expected to testify regarding the documentation completed in conjunction with their tenancy at the subject properties, the information conveyed to them by or on behalf of Mr. Murray, and in most instances, the absence of children in the subject properties.

3. U.S. Department of Housing and Urban Development Inspectors, including, but not limited to: Kelvin Brown, D. Howard, Todd Trabue, Carl Chish and Randy Adkins. These inspectors are expected to testify regarding inspections they completed of the subject properties between 1999 and 2007 and the absence of lead based paint in most instances and/or the acceptable remediation of lead based paint where appropriate.

4. Representative(s) of the Indianapolis Housing Agency. Respondent has not yet been able to identify the appropriate representative(s) of the Indianapolis Housing Agency to testify regarding the process and requirements for properties to be accepted under the Section 8 Housing Assistance Program and the status of the subject properties within that program during the timeframes in question.

**B. Copies of Documents and Exhibits.**

1. Curriculum vitae/resume of expert witnesses. At this time, Respondent anticipates calling the U.S. Department of Housing and Urban Development Inspectors in their official capacity, but has not retained the inspectors as experts in this matter. As a result, Respondent does not possess a resume or curriculum vitae for any of the inspectors or the as-of-yet unidentified representative(s) of the Indianapolis Housing Agency.

2. Exhibits to be utilized at the hearing. Respondent has attached copies of documents he anticipates using during the hearing in this matter. The documents are as follows:

a. Respondent's Exhibit 1. Landlord Packet for Section 8 Housing prepared by the Indianapolis Housing Agency.

b. Respondent's Exhibit 2. Inspection Forms and associated documents from U.S. Department of Housing and Urban Development for 3252 Nicholas.

- c. Respondent's Exhibit 3. Inspection Forms and associated documents from U.S. Department of Housing and Urban Development and Notice of Needed Repairs for 3527 College Avenue.
- d. Respondent's Exhibit 4. Inspection Forms and associated documents from U.S. Department of Housing and Urban Development and Notice of Needed Repairs for 1101 Fall Creek Parkway.
- e. Respondent's Exhibit 5. Inspection Forms and associated documents from U.S. Department of Housing and Urban Development and Notice of Needed Repairs for 3033 Park Avenue.
- f. Respondent's Exhibit 6. Inspection Forms and associated documents from U.S. Department of Housing and Urban Development and Notice of Needed Repairs for 2516 Park Avenue.
- g. Respondent's Exhibit 7. Inspection Forms and associated documents from U.S. Department of Housing and Urban Development and Notice of Needed Repairs for 952 E. 34<sup>th</sup> Street.

C. **Place for hearing and estimated time for direct case.**

Indianapolis, Indiana is Respondent's preferred place for the hearing. The vast majority of Respondent's anticipated witnesses reside in or near the Indianapolis, Indiana area, and requiring Respondent to conduct the hearing at any other location would create an extreme hardship on Defendant and severely degrade his ability to present a response to Claimant's allegations. Respondent estimates that presenting his direct case will require approximately two (2) days. Respondent does not anticipate that any translation services will be necessary during his direct case.

D. **Denial of Paragraph 3 of Claimant's Complaint.**

Respondent's denial of paragraph 3 of Claimant's Complaint was in error. Respondent acknowledges that his name is Edward L. Murray, Jr. and that he resides at 9410 Mercury Drive, Indianapolis, Indiana.

E. **Respondent's response regarding written lease agreements referenced in paragraph 20 of the Complaint.**

Respondent acknowledges that written leases exist for the identified properties on the dates identified. However, some of the properties have multiple apartments and without further information from Claimant regarding the specific leases, Respondent is unable to admit to the allegations of paragraph 20. Respondent anticipates that once additional information is conveyed by Claimant, that Respondent will be able to admit that written leases to exist as asserted in paragraph 20 of the Complaint.

F. **Respondent's response to paragraph 21 of the Complaint.**

If the written leases referenced in paragraph 20 of the Complaint are the same written leases of which Respondent is aware, Respondent anticipates that he will be able to admit the allegations of paragraph 21 once additional information is provided by Claimant. However, at this time, Respondent is unable to admit the allegations of paragraph 21 of the Complaint without knowing the specific leases referenced by paragraph 20 of the Complaint.

G. **Documents which support affirmative defenses 1, 2, 3 and 5.**

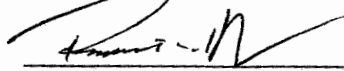
Respondent believes that the documents hereto and referenced above in paragraph B(2) support the affirmative defenses alleged in this matter. Respondent continues to search for relevant documents which support the affirmative defenses and will provide those documents to Claimant as quickly as possible.

H. **Statement regarding affirmative defenses and reduction of penalty.**

Respondent disputes that violations existed with the subject properties. Each of the properties listed in Claimant's Complaint is enrolled in the Section 8 Family Assistant Program of the U.S. Department of Housing and Urban Development. Enrollment of a property in the Section 8 program involves inspections by representatives of the Department of Housing and Urban Development, which specifically includes inspection of the existence and condition of lead based paint. It is Respondent's contention and understanding that a property that contains lead based paint cannot be enrolled in the Section 8 Program. Additionally, for each property enrolled in the Section 8 Program, for each tenant, the Respondent is provided a "Landlord's Packet" by the Indianapolis Housing Agency. The packet includes the mandated pamphlet and certification documentation. The Program's requirements mandate that the documentation be completed before any payments will be made. Respondent has received payments pursuant to the Section 8 Rental Assistance Program for each of the properties listed in the Complaint during the time periods alleged in the Complaint. Respondent contends that by virtue of the payments, all of the necessary documentation was completed and filed with the Indianapolis Housing Agency. Otherwise, no payments would have been received by Respondent.

Further, Respondent contends that he is only required to maintain supporting documentation for a period of three (3) years. Some of the alleged properties and timeframes asserted in the Complaint exceed the required recordkeeping timeframe. As a result, Respondent contends that at least a portion of Claimant's allegations are beyond the scope of recoverable timeframes.

DUFFIN & HASH, LLP



Robert W. Hash

Attorney No.: 16422-49

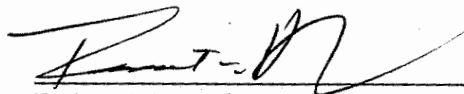
DUFFIN & HASH, LLP  
251 E. Ohio Street  
Suite 900  
Indianapolis, IN 46204  
(317) 580-9348  
(317) 224-2345 Facsimile  
Attorney for Respondent,  
Edward L. Murray, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by First Class, United States Mail, postage prepaid, this 7<sup>th</sup> day of July, 2008.

Ms. Cynthia A. King  
Associated Regional Counsel  
U.S. EPA – Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604

Ms. Sonja Brooks-Woodard  
Regional Hearing Clerk  
U.S. EPA  
77 W. Jackson Boulevard, E-13J  
Chicago, IL 60604



Robert W. Hash

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