

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 8
4 Docket No. TSCA-08-2007-0009
5

6 In the Matter of:)
7)
8 Mack Irrevocable Trust,) **PENALTY COMPLAINT AND NOTICE OF**
9) **OPPORTUNITY FOR HEARING**
10 Respondent.)

11
12 **INTRODUCTION (JURISDICTION)**
13

14 1. This civil administrative enforcement action is authorized by Congress in the
15 Residential Lead-Based Paint Hazard Reduction Act (“Residential Lead Hazard Act”) and the
16 Toxic Substances Control Act (“TSCA”). 42 U.S.C. § 4851 *et seq.*, and 15 U.S.C. § 2601 *et seq.*
17 EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the
18 Code of Federal Regulations and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the
19 regulations constitute violations of section 16 of TSCA. The rules for this proceeding are the
20 “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,
21 Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or
22 Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed.
23

24 2. The undersigned EPA officials have been properly delegated the authority to issue
25 this action.
26

27 3. EPA alleges that Respondent has failed to comply with federal regulations
28 regarding the disclosure of lead-based paint hazards, found at 40 C.F.R. part 745, subpart F and,
29 therefore, is in violation of the Residential Lead Hazard Act and TSCA. As a result, EPA
30 proposes the assessment of a civil penalty, as more fully explained below. 42 U.S.C.
31 § 4852d(b)(5), 15 U.S.C. § 2689.
32

33 **NOTICE OF OPPORTUNITY FOR A HEARING**
34

35 4. Respondent has the right to a public hearing before an administrative law judge
36 (ALJ) to contest (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the
37 proposed penalty, or both.
38

39 5. To disagree with the Complaint and assert your right to a hearing, Respondent
40 must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop
41 Street, Denver, CO 80202-1129) not more than 30 days after receiving this Complaint and
42 provide a copy to the enforcement attorney listed below. The answer must clearly admit, deny or
43 explain the factual allegations of the Complaint, the grounds for any defense, the facts you may
44 dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of

1 Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN**
2 **ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE**
3 **RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR**
4 **PROPOSED PENALTY AND RESULT IN A DEFAULT JUDGMENT AND**
5 **ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**
6

7 QUICK RESOLUTION

8
9 6. Respondent may resolve this proceeding at any time by paying the specific penalty
10 proposed in the Complaint. Such payment need not contain any response to, or admission of,
11 the allegations in the Complaint. Such payment constitutes a waiver of Respondent's right to
12 contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice
13 for a full explanation of the quick resolution process, including how extensions of time to pay
14 can be obtained.
15

16 SETTLEMENT NEGOTIATIONS

17
18 7. EPA encourages settlement discussions through informal settlement conferences.
19 If you want to pursue the possibility of settling this matter, or have any other questions, contact
20 Eduardo Quintana, Senior Enforcement Attorney, at 303-312-6924 or 1-800-227-8917; extension
21 312-6924 or at the address below. **Please note that contacting the attorney or requesting a**
22 **settlement conference does NOT delay the running of the 30 day period for either paying**
23 **the penalty or filing an answer and requesting a hearing.**
24

25 ALLEGATIONS

26
27 8. Respondent is the Mack Irrevocable Trust, ("Respondent").
28

29 9. EPA regulations require, among other things, that an owner of housing
30 constructed before 1978 shall, prior to obligating a lessee under a contract to lease or rent the
31 housing, provide or include in or attach to the leasing contract, (1) an EPA-approved lead hazard
32 information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of
33 any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such
34 presence), (4) a list of any records or reports available to the owner related to lead-based paint or
35 hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she
36 received the above information, and (6) signatures (dated) by both parties certifying the accuracy
37 of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).
38

39 10. Respondent is, and at all times relevant to this Complaint has been, the owner, as
40 that term is defined in 40 C.F.R. § 745.103, of the Grosvenor Arms Apartments property located
41 at 333 E. 16th Ave., Denver, Colorado 80203.
42

1 11. The property located at 333 E. 16th Ave. is “residential real property” within the
2 meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42
3 U.S.C. § 4851b(24), that was constructed before 1978.
4

5 12. The Grosvenor Arms Apartments property consists of approximately 43
6 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based
7 Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
8

9 13. Prior to February 15, 2007, Respondent was not providing an EPA-approved lead
10 hazard information pamphlet prior to entering into lease contracts and was not including a lead
11 warning disclosure statement within its lease contracts.
12

13 14. On March 4, 2007, Respondent entered into written lease agreement (lease
14 contract) with Joshua Foust for the rental of Apartment 105, which is a residential apartment unit
15 in the Grosvenor Arms Apartments property. As part of entering into this lease agreement,
16 Respondent failed to comply with the following requirements:
17

- 18 a. Respondent failed to provide an EPA-approved lead hazard information pamphlet
19 prior to entering into the lease contract of Apartment 105 with Joshua Foust as
20 described above in violation of 40 C.F.R. § 745.107(a)(1), 42 U.S.C.
21 § 4852d(b)(5), 15 U.S.C. § 2689.
22
- 23 b. Respondent failed to include a lead warning statement within the lease contract
24 described above before the renter/lessee was obligated in violation of
25 40 C.F.R. § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
26
- 27 c. Respondent failed to include a statement disclosing the presence of any known
28 lead-based paint and/or lead-based paint hazards (or lack of knowledge of such
29 presence), within the lease contract described above before the renter/lessee was
30 obligated in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), 15
31 U.S.C. § 2689.
32
- 33 d. Respondent failed to include a list of any records or reports available to the owner
34 related to lead-based paint or hazards (or a statement that no such records exist)
35 within the lease contract described above before the renter/lessee was obligated in
36 violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. §
37 2689.
38
- 39 e. Respondent failed to include a statement by the renter/lessee that he received the
40 information described above in violation 40 C.F.R. § 745.113(b)(4), 42 U.S.C.
41 § 4852d(b)(5), 15 U.S.C. § 2689.
42

- 1 f. Respondent failed to include the signature of the lessor and lessee certifying to the
2 accuracy of their statements, to the best of their knowledge along with the
3 dates of signature, in violation 40 C.F.R. § 745.113(b)(6), 42 U.S.C.
4 § 4852d(b)(5), 15 U.S.C. § 2689.
5

6 PROPOSED CIVIL PENALTY 7

8 15. The Residential Lead Hazard Act and TSCA, as amended by subsequent penalty
9 adjustment law, authorize the assessment of a civil penalty of up to \$11,000 for each violation of
10 the EPA regulations. In determining the amount of any civil penalty assessed, EPA is required to
11 take into account the nature, circumstances, extent and gravity of the violation or violations
12 alleged and, with respect to the violator, ability to pay, effect on ability to continue to do
13 business, any history of prior such violations, the degree of culpability, and such other factors as
14 justice may require. **EPA proposes that a penalty of Six Thousand One Hundred and**
15 **Eighty-Seven Dollars and Fifty Cents (\$6,187.50)** be assessed against Respondent for the
16 violations alleged above.
17

18 16. EPA calculates penalties through the application of a national enforcement
19 response policy that provides a rational, consistent and equitable calculation methodology for
20 applying the statutory factors to particular cases. As discussed in the policy, the severity of each
21 violation alleged in the complaint is based on the extent to which each violation impairs the
22 ability of a lessee to assess information regarding hazards associated with lead-based paint, and
23 precludes the lessee from making a fully informed decision whether to lease the housing or take
24 appropriate measures to protect against lead-based paint hazards.
25

26 17. The penalty was calculated using the Section 1018 of Title X of the Residential
27 Lead-Based Paint Hazard Reduction Act – Disclosure Rule Enforcement Response Policy (ERP),
28 dated February 2000, a copy of which is enclosed.
29

30 Nature, Circumstances, Extent and Gravity of Violations 31

32 The nature of the violations is hazard assessment, as discussed on page 9 of the ERP. The
33 circumstance level of the violations ranged from Level 1 to Level 6, based on the circumstance
34 level matrix in Appendix of the ERP. The extent level of the violations was minor, based on the
35 extent level matrix on page B-4 of the ERP. Using the gravity-based penalty matrix on page B-4
36 of the ERP, which combines the circumstance and extent level for each Count, the gravity-based
37 penalty amount is \$4,950.00.
38

39 Statutory Factors 40

41 Ability to pay/ability to continue in business: EPA does not have any information on the
42 Respondent's ability to pay. No adjustment has been made using this factor.
43

1 History of prior violations: This factor only adjusts the penalty upward. No history of prior
2 violations found, so no adjustment has been made using this factor

3
4 Degree of culpability: The Residential Lead Hazard Act has been in effect since 1996. The
5 Respondent should have had sufficient knowledge to recognize the hazard created by his
6 conduct, and/or significant control over the situation to avoid committing the violation. A notice
7 of noncompliance was issued to Respondent on or about December 2, 1998. EPA has increased
8 the penalty by 25%.

9
10 Other factors as justice may require:

11
12 No adjustments made at this time regarding these factors.

13
14 **The total adjusted penalty is \$6,187.50.**

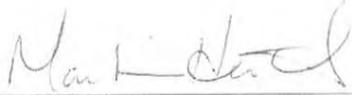
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16 18. The ALJ is not bound by EPA's penalty policy nor the penalty proposed in the
17 Complaint and may assess a penalty above the proposed amount, up to the maximum amount
18 authorized by the statute.

1 **In the Matter of: Mack Irrevocable Trust**
2 **Docket No.: TSCA-08-2007-0009**

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4
5 To discuss settlement or ask any questions you may have about this process, please
6 contact Eduardo Quintana, Senior Enforcement Attorney, at the number or address below.
7

8 United States Environmental Protection Agency
9 Region 8, Office of Enforcement, Compliance and
10 Environmental Justice, Complainant
11

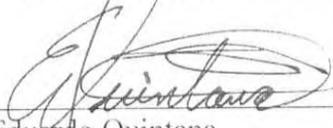
12
13
14 Date: 9/20/07

15 By: 
16 Martin Hestmark, Director
17 Technical Enforcement Program
18

19 SEP 21 2007
20 Date: _____

21 By: 
22 Michael T. Risner, Director
23 David J. Janik, Supervisory Attorney
24 Legal Enforcement Program
25

26 Date: 9/18/2007

27 
28 Eduardo Quintana,
29 Senior Enforcement Attorney
30 Legal Enforcement Program
31 U.S.E.P.A. Region 8
32 1595 Wynkoop Street (ENF-L)
33 Denver, CO 80202-1129
34 303.312.6924
35 1.800.227.6924; ext. 312-6924
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CERTIFICATION OF SERVICE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

I hereby certify that on this 25 day of September, 2007, a copy of the foregoing Penalty Complaint and Notice of Opportunity for Hearing, with enclosures was served by certified mail, return receipt requested to:

Mr. Richard Pfeifer
Mack Irrevocable Trust
2701 Alcott St. Ste. 468
Denver, CO 80211

The original and one copy was hand-delivered to:

Tina Artemis
Region 8 Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

Date: 63 2 2007

Signature: 

Name and Title: attorney