

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

2017 JUN 23 AM 9:00
U.S. Environmental Protection Agency
Region 2

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In the Matter of :
: :
: :
Rosmarins Land Holdings, LLC and :
Camp Rosmarin, Inc., :
: :
Respondents. :
: :
Proceeding under Section 16(a) of :
the Toxic Substances Control Act, as amended. :
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**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No.
TSCA-02-2017-9282

COMPLAINT

This is a civil administrative action instituted pursuant to § 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act, as amended (“TSCA”), 15 U.S.C. § 2601 *et seq.* This Complaint serves notice of Complainant’s determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745 Subpart F, which were promulgated pursuant to § 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, codified at 42 U.S.C. § 4851 *et seq.* (hereinafter “§ 1018”).

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance (“DECA”), United States Environmental Protection Agency, Region 2 (“EPA”), has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

1. Respondents are Rosmarins Land Holdings, LLC and Camp Rosmarin, Inc. (hereinafter collectively “Respondents”).
2. Each Respondent is incorporated under the laws of New York State.
3. Each Respondent’s primary place of business is located at 12 School Road, Monroe, New York 10950.
4. Respondent Rosmarins Land Holdings, LLC owns the land and structures at 11 School Road, Monroe, NY.
5. Among the structures at 11 School Road are 96 cottages used as a summer residential colony.
6. The summer residential colony at 11 School Road, Monroe, NY is known as

“Rosmarins” and “Rosmarin Cottages.”

7. The cottages at 11 School Road, Monroe, NY were built prior to 1978.
8. The cottages at 11 School Road, Monroe, NY are “target housing” as that term is defined by § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103.
9. Respondent Rosmarins Land Holdings, LLC is an “owner” of target housing as that term is defined by 40 C.F.R. § 745.103.
10. Respondent Camp Rosmarin, Inc. is a business engaged in the operation of a children’s summer day camp, Rosmarins Day Camp, on the property located at 11 School Road, Monroe NY.
11. Respondent Camp Rosmarin, Inc. also acts as a general manager or managing agent of the summer residential colony.
12. The cottages at 11 School Road, Monroe NY are leased by Respondent Camp Rosmarin, Inc. to summer residents.
13. The annual summer lease period to summer residents is from Memorial Day until the Sunday after Labor Day.
14. Respondent Camp Rosmarin Inc. is a “lessor” of target housing as that term is defined by 40 C.F.R. § 745.103.
15. The summer leases are “transactions to sell or lease target housing” within the meaning of 40 C.F.R. § 745.101.
16. The summer leases are not exempt short-term leases within the meaning of 40 C.F.R. § 745.101.
17. The Respondents are subject to the regulations and requirements pertaining to the Lead-Based Paint Disclosure Rule (“Disclosure Rule”) promulgated pursuant to 42 U.S.C. § 4852d, and set forth at 40 C.F.R. Part 745, Subpart F.
18. The Disclosure Rule regulations set forth at 40 C.F.R. Part 745, Subpart F require that the lessors of target housing must take the following actions, among others, prior to lessees becoming obligated to lease target housing:
 - a. Provide to lessees an EPA-approved lead hazard information pamphlet;
 - b. Disclose to lessees the presence of any known lead-based paint (“LBP”) and/or LBP hazards in the target housing being leased;
 - c. Include, either within or as an attachment to the lease contract, a Lead Warning Statement; and
 - d. Provide lessees with any records or reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased. 40 C.F.R. § 745.107
19. Pursuant to 40 C.F.R. § 745.113(b), each contract to lease target housing shall include, as an attachment or within the contract, the following elements:

- a. 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.
- b. 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 indicating no knowledge of the presence of lead-based paint hazards (40 C.F.R. § 745.113(b)(2));
- c. A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate (40 C.F.R. § 745.113(b)(3)); and
- d. 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 required under 15 U.S.C. § 2696 (40 C.F.R. § 745.113(b)(4)).

Unit 42A

20. On or about July 22, 2016, EPA received a tip/complaint from the lessee of 11 School Road, Unit 42A, in Monroe, New York 10950.
21. The lessee of Unit 42A reported that he and his wife had leased unit 42A from Respondents for Summer 2014 (May 26, 2014 to September 8, 2014), a lease period of 105 days.
22. Prior to January 1, 2015 the lessee of Unit 42A renewed the lease for Summer 2015 (May 25, 2015 to September 13, 2015), a lease period of 111 days.
23. Unit 42A was built in 1956.
24. The lessee of Unit 42A further informed EPA that during the Summer 2014 lease period his first child was 2 years old and his wife was pregnant with their second child.
25. The lessee of Unit 42A further informed EPA that during the Summer 2015 lease period his first child was 3 years old and his second child was 9 months old.
26. Prior to the end of the Summer 2015 lease period, the lessee of Unit 42A contacted Mr. Scott Rosmarin, president of Respondent Camp Rosmarin, Inc., and Property Manager for both Respondents.
27. The lessee of Unit 42A told Mr. Rosmarin that he would like to renew the lease for Unit 42A for the Summer of 2016, provided that Respondents made repairs to the unit. Specifically, the lessee of Unit 42A requested *inter alia* that Respondents remove peeling and chipping paint.

28. The lessee of Unit 42A told Mr. Rosmarin that he had two small children residing in the unit during the summers and was concerned for their safety.
29. Mr. Rosmarin agreed on behalf of Respondents that all repairs would be made to the unit.
30. The lessee of Unit 42A renewed the lease with Respondent Camp Rosmarin, Inc. for Summer 2016 (May 30, 2016 to September 11, 2016), a lease period of 106 days.
31. Payments made under each lease entered into for Unit 42A were made by check. The payee on each such check was Martin Rosmarin.
32. Upon information and belief, Martin Rosmarin is a member of Respondent Rosmarins Land Holdings, LLC.
33. On each lease for Unit 42A, the mailing address for the lessor is given as "Rosmarins, 12 School Road, Monroe, NY."
34. Respondents did not at any time provide the lessee of Unit 42A:
 - a. An EPA-approved lead hazard information pamphlet;
 - b. Disclosure regarding the presence of any known LBP and/or LBP hazards in the target housing being leased;
 - c. A Lead Warning Statement; or
 - d. Any records or reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased.
35. None of the leases provided to the lessee of Unit 42A contained the elements required by 40 C.F.R. § 745.113(b).
36. The peeling and chipping paint in and around Unit 42A was not repaired.

Units 1, 14B, 20A, 23A, 38A, 43A, 44B, 1A/B, 6A, 10B

37. On or about August 17, 2016, EPA issued an Information Request Letter ("IRL") to Mr. Scott Rosmarin of "The Rosmarins" at 12 School Road, Monroe, NY, regarding compliance with the Disclosure Rule requirements.
38. The IRL also provided information on requirements pertaining to lead-based paint in target housing, including the Disclosure Rule and the Renovation Repair and Painting Rule (40 C.F.R. Part 745, Subpart E).
39. On or about August 23, 2016, Mr. Scott Rosmarin contacted EPA and spoke with a member of DECA's Lead Team. The Lead Team member explained the requirements of the Disclosure Rule and answered questions Mr. Rosmarin had regarding the IRL.
40. On or about August 24, 2016, Mr. Scott Rosmarin contacted EPA with additional inquiries regarding the Disclosure Rule requirements for short-term and vacation rental properties. The same Lead Team member responded to Mr. Rosmarin's inquiries and urged him to submit a response to the IRL to EPA.

41. On or about September 16, 2016, EPA received a response from Respondent Camp Rosmarin, Inc. to the IRL signed by Mr. Scott Rosmarin (“the IRL Response”).
42. The IRL requested the submission of “one sample copy of each form(s) pertaining to the disclosure of lead-based paint and/or lead-based paint hazards that is provided to the lessee(s).” The IRL Response stated that “No forms were provided.”
43. Copies of ten (10) executed leases for Summer 2016 were enclosed with the IRL Response.
44. The Summer 2016 leases enclosed with the IRL Response were for Units 1, 14B, 20A, 23A, 38A, 43A, 44B, 1A/B, 6A, 10B at 11 School Road, Monroe, NY.
45. Each unit for which a lease was provided was constructed between 1928 and 1956.
46. Each unit was leased for the period from Memorial Day 2016 through the Sunday after Labor Day 2016 (104 days).
47. Respondents did not at any time during the lease period provide the lessees of Units 1, 14B, 20A, 23A, 38A, 43A, 44B, 1A/B, 6A, 10B:
 - a. An EPA-approved lead hazard information pamphlet;
 - b. Disclosure regarding the presence of any known LBP and/or LBP hazards in the target housing being leased;
 - c. A Lead Warning Statement; or
 - d. Any records or reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased.
48. The leases for Units 1, 14B, 20A, 23A, 38A, 43A, 44B, 1A/B, 6A, 10B submitted with the IRL Response did not contain the elements required by 40 C.F.R. § 745.113(b).

COUNT 1

Lead Warning Statement

49. Paragraphs 1 through 48 are re-alleged and incorporated as if fully set forth herein.
50. Under 40 C.F.R. § 745.113(b)(1), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a “Lead Warning Statement” which is set forth in the regulation.
51. Respondents leased the target housing units: 1, 14B, 20A, 23A, 38A, 42A, 43A, 44B, 1A/B, 6A, 10B in 2016, Unit 42A in 2015, and Unit 42A in 2014 to summer residents of the colony at 11 School Road.
52. A Lead Warning Statement as specified in 40 C.F.R. § 745.113(b)(1) was neither contained in nor attached to any contract to lease any of the units identified in paragraph 51, above.
53. Failure to include in or attach a Lead Warning Statement to the contract to lease is a

violation of 40 C.F.R. § 745.113(b)(1).

54. Respondents' failures to comply with 40 C.F.R. § 745.113(b)(1) described in paragraph 52, above, constitute thirteen (13) separate violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689, for which a penalty may be assessed.

COUNT 2

Statement Disclosing Knowledge of Lead-Based Paint

55. Paragraphs 1 through 48 are re-alleged and incorporated as if fully set forth herein.
56. Under 40 C.F.R. § 745.113(b)(2), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence.
57. Respondents leased the target housing units: 1, 14B, 20A, 23A, 38A, 42A, 43A, 44B, 1A/B, 6A, 10B in 2016, Unit 42A in 2015, and Unit 42A in 2014 to summer residents of the colony at 11 School Road.
58. A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence was neither contained in nor attached to the contract to lease any of the units identified in paragraph 57, above.
59. Failure to include or attach a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence to the contract to lease is a violation of 40 C.F.R. § 745.113(b)(2).
60. Respondents' failures to comply with 40 C.F.R. § 745.113(b)(2) described in paragraph 58, above, constitute thirteen (13) separate violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689, for which a penalty may be assessed.

COUNT 3

List of Records or Reports Pertaining to Lead-Based Paint

61. Paragraphs 1 through 48 are re-alleged and incorporated as if fully set forth herein.
62. Under 40 C.F.R. § 745.113(b)(3), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or an indication that no such records or reports are available.
63. Respondents leased the target housing units: 1, 14B, 20A, 23A, 38A, 42A, 43A, 44B, 1A/B, 6A, 10B in 2016, Unit 42A in 2015, and Unit 42A in 2014 to summer residents of the colony at 11 School Road.
64. A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or an indication

that no such records or reports are available, was neither contained in nor attached to the contract to lease any of the units identified in paragraph 63, above.

65. Failure to include or attach to the contract to lease a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or to indicate if no such records or reports are available, is a violation of 40 C.F.R. § 745.113(b)(3).
66. Respondents' failures to comply with 40 C.F.R. § 745.113(b)(3) described in paragraph 64, above, constitute thirteen (13) separate violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689, for which a penalty may be assessed.

COUNT 4

Lessee's Receipt of Information

67. Paragraphs 1 through 48 are re-alleged and incorporated as if fully set forth herein.
68. Under 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming the receipt of: (1) the lessor's statement disclosing the presence of known lead-based paint (or indicating no knowledge); (2) the list of any records or reports available to the lessor pertaining to lead-based paint; and (3) the lead hazard information pamphlet required by 15 U.S.C. § 2696.
69. Respondents leased the target housing units: 1, 14B, 20A, 23A, 38A, 42A, 43A, 44B, 1A/B, 6A, 10B in 2016, Unit 42A in 2015, and Unit 42A in 2014 to summer residents of the colony at 11 School Road.
70. A statement from the lessee affirming receipt of the information specified in 40 C.F.R. § 745.113(b)(4) was neither contained in nor attached to the contract to lease any of the units identified in paragraph 69, above.
71. Failure to include or attach to the contract to lease a statement from the lessee affirming receipt of the specified information is a violation of 40 C.F.R. § 745.113(b)(4).
72. Respondents' failures to comply with 40 C.F.R. § 745.113(b)(4) described in paragraph 70, above, constitute thirteen (13) separate violations of § 409 of TSCA, 15 U.S.C. § 2689, for which a penalty may be assessed.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with § 1018, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f), which authorize the assessment of a civil penalty under TSCA § 16, 15 U.S.C. § 2615, in the maximum amount of \$10,000 for each violation of TSCA § 409, 15 U.S.C. § 2689. Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. Section 3701, amendments to the Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, have adjusted this maximum amount to \$16,000 per violation for violations occurring between December 6, 2013 and November 2, 2015 and to \$17,046 for violations occurring on or after November 3, 2015 and assessed after January 15, 2017. See 2016 Civil Monetary Penalty

Inflation Adjustment Rule (“2016 Adjustment Rule”), 81 Fed. Reg. 43,091 (Jul. 1, 2016) and 2017 Civil Monetary Penalty Inflation Adjustment Rule (“2017 Adjustment Rule”), 82 Fed. Reg. 3633, 3636 (January 12, 2017).

For the purposes of determining the amount of any penalty to be assessed, the Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondents, to the extent known at this time, their ability to pay, the effect of the penalty on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. TSCA § 16, 15 U.S.C. § 2615. To develop the proposed penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific references to EPA’s December 2007 “§ 1018 Disclosure Rule Enforcement Response and Penalty Policy.” This policy provides rational, consistent, and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases and penalty matrices which have been adjusted by the 2008 Civil Monetary Penalty Adjustment Rule, 73 Fed. Reg. 75340 (December 11, 2008), and the 2016 Adjustment Rule. Copies of these documents are available on request, or can be found on the web at <https://www.epa.gov/enforcement/policy-guidance-publications>.

Given the facts alleged in this Complaint, Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in the Complaint:

COUNT 1: Failure to Include Lead Warning Statement in Contract to Lease Target Housing

Circumstance Level: **2**
 Total number of violations: **13**
 Extent Category: Major (child under 6) **3**
 Significant (age of youngest occupant unknown) **10**

Penalty Per Violation:	Major	\$ 11,340 (> 1/2009)
	Major	\$ 15,736 (> 11/2015)
	Significant	\$ 9,835 (> 11/2015)

2 Major violations	X \$ 11,340	=	\$ 22,680
1 Major violation	X \$ 15,736	=	\$ 15,736
10 Significant violations	X \$ 9,835	=	\$ 98,350

Total Proposed Assessment for this Count: **\$136,766**

COUNT 2: Failure to Include Statement Disclosing Lessor’s Knowledge of Lead-Based Paint in Contract to Lease Target Housing

Circumstance Level: **3**
 Total number of violations: **13**
 Extent Category: Major (child under 6) **3**
 Significant (age of youngest occupant unknown) **10**

Penalty Per Violation:	Major	\$ 8,500 (> 1/2009)
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Major \$ 11,802 (>11/2015)
 Significant \$ 7,868 (>11/2015)

2 Major violations X \$ 8,500 = \$ 17,000
 1 Major violation X \$ 11,802 = \$ 11,802
 10 Significant violations X \$ 7,868 = \$ 78,680

Total Proposed Assessment for this Count: \$107,482

COUNT 3: Failure to Include List of Records or Reports Pertaining to Lead-Based Paint in Contract to Lease Target Housing

Circumstance Level: **5**

Total number of violations: **13**

Extent Category: Major (child under 6) **3**
 Significant (age of youngest occupant unknown) **10**

Penalty Per Violation: Major \$ 2,840 (>1/2009)
 Major \$ 3,934 (>11/2015)
 Significant \$ 2,562 (>11/2015)

2 Major violations X \$ 2,840 = \$ 5,680
 1 Major violation X \$ 3,934 = \$ 3,934
 10 Significant violations X \$ 2,562 = \$ 25,620

Total Proposed Assessment for this Count: \$ 35,234

COUNT 4: Failure to Include Statement Acknowledging Lessees' Receipt of Information in Contract to Lease Target Housing

Circumstance Level: **4**

Total number of violations: **13**

Extent Category: Major (child under 6) **3**
 Significant (age of youngest occupant unknown) **10**

Penalty Per Violation: Major \$ 5,670 (>1/2009)
 Major \$ 7,868 (>11/2015)
 Significant \$ 4,910 (>11/2015)

2 Major violations X \$ 5,670 = \$ 11,340
 1 Major violation X \$ 7,868 = \$ 7,868
 10 Significant violations X \$ 4,910 = \$ 49,100

Total Proposed Assessment for this Count: \$ 68,308

TOTAL PROPOSED PENALTY **\$347,790**

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were originally set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS (“Consolidated Rules of Practice”), and which are codified at 40 C.F.R. Part 22. These rules were recently amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 *Fed. Reg.* 2230, January 9, 2017. These amendments became effective on May 22, 2017 and apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this Complaint.

A. Answering the Complaint

Where Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondents’ Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondents’ failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondents in their Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). See generally Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues

appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. See Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: "A civil penalty for a violation of section 2614...of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity...for a hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554]."

If Respondents fail to request a hearing, such failure may operate to preclude Respondents from obtaining judicial review of an adverse EPA order. See 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

C. Failure to Answer

If Respondents fail in their Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondents fail to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents for failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondents, and to collect the assessed penalty amount, in federal court.

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondents have filed an Answer(s) should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R

Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondents fail to appeal an adverse initial decision to the Environmental Appeals Board (“EAB”) (see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondents waive its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency’s Environmental Appeals Board, Respondents must do so “within thirty (30) days after the initial decision is served.” 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, “5 days shall be added to the time allowed by these [rules] for the filing of a responsive document.” Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondents request a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this Complaint, and Respondents may also provide whatever additional information that they believe is relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant’s calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents’ ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this Complaint should be directed to:

Melva J. Hayden, Esq.
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th floor
New York, NY 10007-1866
(212)-637-3230

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondents waive their right to contest the allegations in the Complaint and waive their right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondents' entry into a settlement through the signing of such Consent Agreement and their compliance with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondents' entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

