

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

John Rice, LLC
930 Avenue A
Opelika, Alabama 36801

Respondent.

Docket No. TSCA-4-2012-26

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

HEARING OFFICER

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PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). Section 16(a) of TSCA and Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (hereinafter "Section 1018"), authorize the Administrator of the United States Environmental Protection Agency to issue a civil complaint for each violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Complainant is the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, who has been duly delegated the authority to institute this action. Respondent is John Rice, LLC.

This Complaint and Notice of Opportunity for Hearing (Complaint) serves as notice that Complainant has reason to believe that Respondent violated Section 409 of TSCA by failing to comply with Section 1018 and its implementing regulations, promulgated at 40 C.F.R. Part 745, Subpart F.

APPLICABLE STATUTORY AND REGULATORY SECTIONS

1. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose certain disclosure requirements concerning lead-based paint and/or lead-based paint hazards upon the sale or lease of target housing.

2. “Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.

3. “Lessor” means any entity that offers target housing for lease, rent or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.

4. “Lessee” means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.

5. Before a lessee is obligated under any contract to lease target housing, the lessor shall provide the lessee with an EPA-approved lead hazard information pamphlet. 40 C.F.R. § 745.107(a)(1).

6. Each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1). 40 C.F.R. § 745.113(b)(1).

7. Each contract to lease target housing shall include 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 and/or lead-based paint hazards. 40 C.F.R. § 745.113(b)(2).

8. Each contract to lease target housing shall include a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing that has been provided to the lessee or indicate that no such records or reports are available. 40 C.F.R. § 745.113(b)(3).

9. Each contract to lease target housing shall include a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696. 40 C.F.R. § 745.113(b)(4).

10. Each contract to lease target housing shall include the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature. 40 C.F.R. § 745.113(b)(6).

11. Failure to comply with 40 C.F.R. §§ 745.107 or 745.113 is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each such violation shall not be more than \$11,000 for violations occurring after July 28, 1997, and \$16,000 for violations occurring after January 12, 2009.

GENERAL ALLEGATIONS

12. At all times relevant to this matter, Respondent was a “lessor” of residential properties located at 215-B Samford Avenue, Opelika, Alabama; 1827 1st Avenue, Opelika, Alabama; 104 14th Street, Opelika, Alabama; and 4006 US Highway 29 N, Opelika, Alabama, as that term is defined at 40 C.F.R. § 745.103.

13. The residential properties located at 215-B Samford Avenue, Opelika, Alabama; 1827 1st Avenue, Opelika, Alabama; 104 14th Street, Opelika, Alabama; and 4006 US Highway 29 N, Opelika, Alabama were constructed prior to 1978.

14. At all times relevant to this matter, the residential properties located at 215-B Samford Avenue, Opelika, Alabama; 1827 1st Avenue, Opelika, Alabama; 104 14th Street, Opelika, Alabama; and 4006 US Highway 29 N, Opelika, Alabama were “target housing,” as that term is defined at 40 C.F.R. § 745.103.

15. Respondent entered into four leases of the residential properties referenced in Paragraphs 12 through 14 on or around the dates listed below, as follows:

<u>Address</u>	<u>Date of Lease</u>
215-B Samford Avenue, Opelika, Alabama	January 2, 2008
1827 1 st Avenue, Opelika, Alabama	April 1, 2008
104 14 th Street, Opelika, Alabama	June 1, 2007
4006 US Highway 29 N, Opelika, Alabama	June 1, 2008

SPECIFIC ALLEGATIONS

COUNTS 1-4: FAILURE TO PROVIDE LESSEES WITH EPA-APPROVED LEAD HAZARD INFORMATION PAMPHLET

16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

17. At the time that Respondent entered into the four leases listed in Paragraph 15, Respondent did not provide the lessees with an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1).

18. Respondent's failures to provide the lessees with an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1) constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 5-8: FAILURE TO INCLUDE LEAD WARNING STATEMENT AS AN ATTACHMENT TO OR WITHIN LEASE

19. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

20. At the times that Respondent entered into the four leases listed in Paragraph 15, Respondent did not include, as an attachment to the leases or within the leases, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1), as required by 40 C.F.R. § 745.113(b)(1).

21. Respondent's failures to include, as an attachment to the leases or within the leases, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1), as required by 40 C.F.R. § 745.113(b)(1) constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 10-13: FAILURE TO INCLUDE STATEMENT DISCLOSING PRESENCE OF LEAD-BASED PAINT AND/OR HAZARDS OR INDICATING NO KNOWLEDGE

22. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

23. At the times that Respondent entered into the four leases listed in Paragraph 15, Respondent failed to include in the leases a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the units being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.113(b)(2).

24. Respondent's failures to include in the leases a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the units being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.113(b)(2) constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 15-18: FAILURE TO INCLUDE LIST OF LEAD-BASED PAINT AND/OR HAZARD RECORDS OR INDICATE NO RECORDS AVAILABLE

25. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

26. At the times that Respondent entered into the four leases listed in Paragraph 15, Respondent failed to include in the leases a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessees or indicate that no such records or reports are available, as required by 40 C.F.R. § 745.113(b)(3).

27. Respondent's failures to include in the leases a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessees or indicate that no such records or reports are available, as required by 40 C.F.R. § 745.113(b)(3) constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 20-23: FAILURE TO INCLUDE STATEMENT AFFIRMING RECEIPT OF INFORMATION IN 40 C.F.R. §§ 745.113(b)(2) AND (3) LEAD HAZARD INFORMATION PAMPHLET

28. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

29. At the times that Respondent entered into the four leases listed in Paragraph 15, Respondent failed to include in the leases a statement by the lessees affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696, as required by 40 C.F.R. § 745.113(b)(4).

30. Respondent's failures to include in the leases a statement by the lessees affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696, as required by 40 C.F.R. § 745.113(b)(4) constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 25-28: FAILURE TO INCLUDE LESSOR AND LESSEE SIGNATURES CERTIFYING ACCURACY OF STATEMENTS AND DATES OF SIGNATURES

31. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

32. At the times that Respondent entered into the four leases listed in Paragraph 15, Respondent did not include the signatures of Respondent and the lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, as required by 40 C.F.R. § 745.113(b)(6).

33. Respondent's failures to include the signatures of Respondent and the lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, as required by 40 C.F.R. § 745.113(b)(6) constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689.

PROPOSED CIVIL PENALTY

Section 16(a) of TSCA and Section 1018 authorize the Administrator of the EPA to assess a civil penalty not to exceed \$10,000 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. That statutory maximum civil penalty has subsequently been raised to \$11,000 per day for each violation that occurred after January 30, 1997, and to \$16,000 per day for each violation that occurred after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19.

In assessing any civil penalty, Section 16(a) of TSCA requires that EPA take into account the nature, circumstances, extent, and gravity of the violations; Respondent's history of such violations of TSCA; the degree of culpability involved; Respondent's ability to pay a penalty without jeopardizing its ability to continue to do business and such other factors as justice may require.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, Complainant requests that the Administrator assess against the Respondent a civil administrative penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred between January 30, 1997, and January 12, 2009.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative

Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired.

The Answer must be filed with:

**Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street
Atlanta, GA 30303**

In addition, please send a copy of the Answer and all other documents that you file with the Regional Hearing Clerk in this action to:

**Michiko Kono
U.S. EPA Region 4
61 Forsyth Street
Atlanta, GA 30303**

Ms. Kono is the attorney assigned to represent EPA in this matter. Her telephone number is (404) 562-9558.

You are further informed that the Consolidated Rules of Practice prohibit any **ex parte** (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

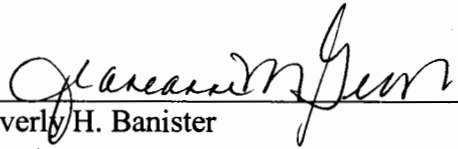
INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Michiko Kono, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

CONSENT AGREEMENT AND FINAL ORDER

EPA has the authority, where appropriate, to modify the amount of a proposed penalty to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order signed by both parties would be binding as to all terms and conditions specified when the Regional Judicial Officer signs the Consent Agreement and Final Order.

Date: 05-23-2012



Beverly H. Banister
Director
Air, Pesticides, and Toxics
Management Division

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Notice of Opportunity for Hearing, in the Matter of John Rice, LLC, Docket No. TSCA-4-2012-2646, and a copy were filed with the Regional Hearing Clerk, and a copy was mailed to the addressee below, in the manner indicated below.

Addressee:

John W. Rice
John Rice, LLC
930 Ave A
Opelika, Alabama 36801

Via United Parcel Service

A copy of EPA's current Section 1018 Enforcement Response Policy and a copy of Part 22 – Consolidated Rules of Practice were mailed with the copy of the Complaint and Notice of Opportunity for Hearing to the addressee above.

5/25/12

Date



Saundi Wilson, paralegal specialist
U.S. EPA Region 4