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

REPLY TO THE ATTENTION OF:

(C-14J)

October 15, 2012

Judge M. Lisa Buschmann
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, D.C. 20460

Re: In the Matter of: Dessie L. Brumfield, d/b/a/ Brumfield Properties, L.L.C.
Docket No. TSCA-05-2010-0014.

Dear Judge Buschmann:

Please find enclosed a copy of the COMPLAINANT POST-HEARING BRIEF for this civil administrative action which I filed today with the Regional Hearing Clerk, pursuant to your ORDER SCHEDULING POST-HEARING BRIEFS, dated August 14, 2012.

Sincerely,

Jeffery M. Trevino
Associate Regional Counsel

Enclosure

cc: LaDawn Whitehead
Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 W. Jackson Boulevard (E-19J)
Chicago IL 60604-3590

Dessie L. Brumfield
5067 N. 37th St.
Milwaukee WI 53209

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Dessie L. Brumfield d/b/a Brumfield Properties, LLC,	)	**Docket No. TSCA-05-2010-0014**
	)	
	)	
Respondent	)	

COMPLAINANT POST-HEARING BRIEF

I. INTRODUCTION

Complainant requests the court find Respondent failed to comply with the Lead Disclosure Rule of the Toxic Substances and Control Act (TSCA), in violation of 40 C.F.R. Part 745, 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5), as alleged in the complaint for this civil administrative action and assess the proposed civil penalty of $58,060.00.

On Tuesday, August 7, 2012, the court held a hearing for this action in Milwaukee, Wisconsin. Complainant provided the court and Respondent with the testimonial and documentary evidence of four witnesses.

Complainant demonstrated that between March 1, 2007, and January 1, 2009, Respondent owner and lessor entered into 7 leases for target housing, but committed thirty-two violations of the TSCA Lead Disclosure Rule, in violation of 40 C.F.R. Part 745, 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Complainant demonstrated the proposed civil penalty of $58,060.00 is fair, reasonable, and consistent with the seriousness of the violations, particularly considering the facts and information produced at hearing. Complainant demonstrated Respondent failed to include, as an attachment or within each lease, the required TSCA Lead Disclosure Information. Complainant

demonstrated several of these leases were for lessees with their young children. The evidence demonstrated one of these leases was for a lessee and her child daycare center. Complainant demonstrated Respondent failed to provide Complainant and the court with a single lease which complied with the TSCA Lead Disclosure Rule.

II. THE STANDARD OF REVIEW FOR AN INITIAL DECISION

"Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence." 40 C.F.R. § 22.24(b). EPA, as the Complainant, has the burden of going forward with and of providing evidence that the violation occurred. In the Matter of Sandoz, Inc., Docket No. RCRA-84-54-R, Appeal No. 85-7; 2 E.A.D. 324, 1987 EPA App. LEXIS 7 (Final Decision, February 27, 1987).

Under rule 40 C.F.R. § 22.24(b), each relevant fact must be decided by the Presiding Officer based upon a preponderance of the evidence. In re LVI Environmental Services, Inc., 2001 EPA App. LEXIS 6 (June 26, 2001). Under a preponderance of the evidence standard, the evidence is evaluated to determine its weight and persuasiveness and the proponent must show that the evidence as a whole proves that the fact sought to be proven is more probable than not (i.e., more credible or convincing to the mind). The Complainant has the burden of persuasion that the relief sought is appropriate, whereas the Respondent has the burden of presenting any response or evidence to establish that it is not. 40 C.F.R. § 22.24(a). Respondent has the burden of presentation and persuasion for any affirmative defenses.

In order for the Complainant to prevail in this action, EPA must establish that the Respondent was an owner or lessor, of target housing, and leased that target housing to lessees, but failed to comply with the TSCA Lead Disclosure Rule at 40 C.F.R. § 745.113 as alleged in the complaint.

TSCA is a strict liability statute and Respondent's state of mind is not relevant to the determination of liability. *See* In the Matter of Leonard Strandley, TSCA Appeal No. 89-4, 3 E.A.D. 718, 722 (CJO, Nov. 25, 1991) (lack of intent not to violate TSCA requirements is not a defense); and In the Matter of Bickford, Inc., Docket No. TSCA-V-C-052-92, 1994 EPA ALJ LEXIS 16, at 9 (ALJ, November 28, 1994) (questions regarding intent are irrelevant to a determination of liability).

III. THE RESIDIENTIAL LEAD-BASED PAINT ACT

A. Statutory Background

In promulgating 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 that must be made as part of residential rentals and sales.

Ultimately, Congress decided that the best role for the federal government was to augment local government efforts by mandating that owners, lessors and agents provide certain specific information to people who were considering the purchase or rental of residential property. This information allows prospective buyers and tenants to make informed decisions about where they and their families are going to reside. In 42 U.S.C. § 4852d (Section 1018),

Congress stated that owners are to provide specific information about lead-based paint, and in addition to these required disclosures mandated language that must appear verbatim within or attached to the contract for each residential transaction.[1]

Section 1018 requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

B. Regulatory Background

Pursuant to 42 U.S.C. § 4852d, on March 6, 1996, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, referred to as the Lead Disclosure Rule. Pursuant to 40 C.F.R. § 745.102(a), owners of more than four residential dwellings must comply with Subpart F by September 6, 1996. The Lead Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which imposes certain requirements on the sale or lease of target housing.

The preamble to the Lead Disclosure Rule states:

> Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure can be especially damaging to children, fetuses, and women of childbearing age. . .Lead poisoning has been called "the silent disease" because its effects may occur gradually and imperceptibly, often showing no obvious symptoms. Blood-lead levels as low as10 μg/dL have been associated with learning disabilities, growth impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system. In large doses, lead exposure can cause brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also alter fetal development and cause miscarriages.
>
> In 1991, the Secretary of HHS characterized lead poisoning as the "number one environmental threat to the health of children in the United States."

61 Fed. Reg. 9065 (March 6, 1996). See also 40 C.F.R. § 745.100.

[1] The requirement for owners to provide the Lead Warning Statement in each rental transaction was added by regulation.

As a result of this federal law, an owner must provide federally mandated information pursuant to the Lead Disclosure Rule to each tenant before the tenant becomes obligated under the lease. As explained in the preamble to the Lead Disclosure Rule:

> In addressing the need for greater clarity regarding the timing of disclosure activities, EPA and HUD have attempted to maximize the parties' flexibility in incorporating these requirements during negotiations. EPA and HUD believe that this flexibility is important given the many types of transactions covered by these provisions and the existence of distinct local requirements and customs. Therefore, the final rule identifies only the latest point at which full disclosure must occur. Using the statute as a guide, EPA and HUD have identified this point as before the purchaser or lessee becomes obligated under any contract to purchase or lease the housing.
>
> * * * *
>
> By requiring that the disclosure information be included in or as an attachment to the lease, EPA and HUD seek to ensure that the disclosure process occurs during lease negotiations.
>
> The requirement that the contract or an attachment include disclosure language fulfills two additional functions. First, the process of completing and signing these sections ensures that all parties are aware of their rights and obligations and are able to confirm that the appropriate actions have already occurred. Second, this disclosure language provides a clear record of compliance.

61 Fed. Reg. 9071. See also 61 Fed. Reg. 9072.[2] See also 40 C.F.R. § 745.100.

The regulations also require that the owner's agent ensure that appropriate information is disclosed to each tenant before the tenant becomes obligated under the lease. *See* 61 Fed. Reg. 9077. If that information demonstrates that the property poses a hazard, a tenant might decide not to reside there. If a tenant decides to rent property with lead-based paint, the tenant must

[2] It is appropriate to use the preamble of a final rule to determine the meaning of a regulation and the promulgating agency's intent. *See* HRI, Inc. v. EPA, 198 F.3d 1224, 1244 n. 13(10th Cir. 2000) (preamble to a regulation is evidence of an agency's contemporaneous understanding of its rules); Wyoming Outdoor Council v. U.S. Forest Serv., 100 F.3d 43, 53 (D.C. Cir. 1999) (while language in the preamble of a regulation is not controlling over the language of the regulation itself, it may serve as a source of evidence concerning contemporaneous agency intent); Commonwealth of Pa. Dep't of Pub. Welfare v. U.S. Dep't of Health and Human Serv., 101 F.3d 939, 944 (3rd Cir. 1996) (preamble to regulations may be used as an aid in determining the meaning of the regulations); Martin v. American Cyanamid Co., 5 F.3d 140, 145 (6th Cir. 1993) (same).

receive information about how to identify any lead hazards in these units, as well as information about simple things the tenant might do to reduce or eliminate exposure to lead based paint hazards.

Because it would be impossible for EPA to interview every tenant involved in a rental transaction to determine if that tenant received the federally required information about lead-based paint, the Lead Disclosure Rule requires that the building owner maintain documentation to demonstrate that this federally-required information was provided to each tenant before the tenant becomes obligated under the lease. As explained in the preamble to the Lead Disclosure Rule, "Further, the completion and retention of disclosure and acknowledgment language is a necessary component of any effective, enforceable disclosure requirement for leasing transactions." 61 Fed. Reg. 9071 (March 6, 1996).

Section 1018 and the Lead Disclosure Rule empower families, giving them information to allow them to make informed choices about where they will live and what they can do to protect themselves and their families from the hazards of lead poisoning. As the preamble to the Lead Disclosure Rule states:

> EPA and HUD expect that this rulemaking will generate benefits by giving prospective home purchasers and lessees access to information that might otherwise have been unavailable (e.g., information pertaining to abatement activities for a specific residence) or that they might have been able to acquire only through their own effort and at some cost. In addition, EPA believes the information will generate health benefits by leading many purchasers and lessees to modify their behavior in a way that will reduce risks from lead-based paint. . .The rule may also prompt property owners, due to the reluctance on the part of prospective purchasers/lessees to select housing containing lead-based paint, to act to reduce lead-related hazards associated with their residential dwellings. Health benefits resulting from such activities are distinguishable from the more direct benefits of the rule, i.e., the value of improved information.

61 Fed. Reg. 9080.

IV. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Complaint alleged that Complainant is, by lawful delegation, the Director of the Land and Chemical Division, Region 5, United States Environmental Protection Agency. (Complaint, Par. 2). Respondent's Answer neither admitted nor denied nor explained the material factual allegation. Therefore, the allegation is admitted. 40 C.F.R. § 22.15(d).

A. Respondent Was the "Owner" of These "Residential Dwellings"

"Owner" means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, governments agencies, housing agencies, Indian tribes, and non-profit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor. 40 C.F.R. § 745.103.

Respondent Dessie L. Brumfield, d/b/a/ Brumfield Properties, LLC, was an "individual."

3072 North 28th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2009
Counts 7, 26

Respondent held legal title to the single-family dwelling located at 3072 North 28th Street, Milwaukee, Wisconsin, from December 21, 2006 to date. (CX 11, 237-244).

The Complaint alleged Respondent owned this residential property from at least March 1, 2007 to January 1, 2009. (Complaint Par. 17). Respondent's failure to admit, deny, or explain any material allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). Respondent stated at hearing "My name is Dessie L. Brumfield. . . I am the property owner." (Tr. 5).

3463 N. 13th Street, Milwaukee, Wisconsin
Lease, Dated November 20, 2008 and December 1, 2008
Counts 1, 8, 14, 20, 27

Respondent held legal title to the single-family dwelling located at 3463 N. 13th Street, Milwaukee, Wisconsin, from January 29, 2002, to date. (CX 11, 229-236).

The Complaint alleged Respondent owned this residential property from at least March 1, 2007 to January 1, 2009. (Complaint Par. 17). Respondent's failure to admit, deny, or explain any material allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). Respondent stated at hearing "My name is Dessie L. Brumfield. . . I am the property owner." (Tr. 5).

2230 North Teutonia Road, Milwaukee, Wisconsin
Lease, Dated May 15, 2008
Counts 4, 11, 17, 23, 30
Lease dated March 1, 2007
Counts 3, 10, 16, 22, 29

Respondent held legal title to the single-family dwelling located at 2230 North Teutonia Road, Milwaukee, Wisconsin, from October 6, 2004, to date. (CX 11, 219-228).

Respondent stated at hearing "My name is Dessie L. Brumfield. . . I am the property owner." (Tr. 5).

4908 North 40th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2008
Counts 5, 12, 18, 24, 31
Lease, Dated January 1, 2009
Counts 6, 13, 19, 25 32

Respondent held legal title to the single-family dwelling located at 4908 North 40th Street, Milwaukee, Wisconsin, from April 4, 2006, to date. (CX 11, 245-254).

The Complaint alleged Respondent owned this residential property from at least March 1, 2007 to January 1, 2009. (Complaint Par. 17). Respondent's failure to admit, deny, or explain any material allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). Respondent stated at hearing "My name is Dessie L. Brumfield. . . I am the property owner." (Tr. 5).

2428 West Brown Street, Milwaukee, Wisconsin
Lease, Dated April 15, 2008
Counts 2, 9, 15, 21, 28

Respondent held legal title to the single-family dwelling located at 2428 West Brown Street, Milwaukee, Wisconsin, from July 8, 2003, to date. (CX 11, 211-218).

The Complaint alleged Respondent owned this residential property from at least March 1, 2007 to January 1, 2009. (Complaint Par. 17). Respondent's failure to admit, deny, or explain any material allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). Respondent stated at hearing "My name is Dessie L. Brumfield. . . I am the property owner." (Tr. 5).

Therefore, Respondent was the "Owner" of these "Residential Dwellings" as defined at 40 C.F.R. § 745.103.

B. These Residential Dwellings Were "Target Housing"

"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.

3072 North 28th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2009
Counts 7, 26

The Residential Dwelling located at 3072 North 28th Street, Milwaukee, Wisconsin, was constructed in 1897. (CX 11, 237-244).

3463 N. 13th Street, Milwaukee, Wisconsin
Lease, Dated November 20, 2008 and December 1, 2008
Counts 1, 8, 14, 20, 27

The Residential Dwelling located at 3463 N. 13th Street, Milwaukee, Wisconsin, was constructed in 1894. (CX 11, 229-236).

2230 North Teutonia Road, Milwaukee, Wisconsin
Lease, Dated May 15, 2008
Counts 4, 11, 17, 23, 30
Lease dated March 1, 2007
Counts 3, 10, 16, 22, 29

The Residential Dwelling located at 2230 North Teutonia Road, Milwaukee, Wisconsin, was constructed in 1890. (CX 11, 219-228).

4908 North 40th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2008
Counts 5, 12, 18, 24, 31
Lease, Dated January 1, 2009
Counts 6, 13, 19, 25, 32

The Residential Dwelling located at 4908 North 40th Street, Milwaukee, Wisconsin, was constructed in 1926. (CX 11, 245-254).

2428 West Brown Street, Milwaukee, Wisconsin
Lease, Dated April 15, 2008
Counts 2, 9, 15, 21, 28

The Residential Dwelling located at 2428 West Brown Street, Milwaukee, Wisconsin, was constructed in 1891. (CX 11, 211-218).

The Complaint alleged these residential properties were constructed prior to 1978. (Complaint Par. 18). Respondent's failure to admit, deny, or explain any material allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

Therefore, these "Residential Dwellings" were "Target Housing," as defined at 40 C.F.R. § 745.103.

C. Respondent Was a "Lessor" Who Leased Target Housing to "Lessees"

"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.

"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.

3072 North 28th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2009
Counts 7, 26

On January 1, 2009, "Brumfield Properties, LLC, Landlord," entered into a "YEARLY LEASE AGREEMENT," with G. and T. Carter, Renters, for the Residential Dwelling located at 3072 North 28th Street, Milwaukee, Wisconsin, for January 1, 2009 to January 10, 2010, for $575.00 per month. (CX 7, 67-72).

3463 N. 13th Street, Milwaukee, Wisconsin
Lease, Dated November 20, 2008 and December 1, 2008
Counts 1, 8, 14, 20, 27

On November 20, 2008, or December 1, 2008, "Dessie Brumfield, Owner," entered into a "LEASE AGREEMENT NOVEMBER 20, 2008," with L. Evans and A. Rush, Tenants, for

rental of the Residential Dwelling located at 3463 N. 13th Street, Milwaukee, Wisconsin, for December 1, 2008 to December 1, 2009, for $600.00 per month. (CX 7, 73-82).

2230 North Teutonia Road, Milwaukee, Wisconsin
Lease, Dated May 15, 2008
Counts 4, 11, 17, 23, 30

On May 15, 2008, Respondent "Brumfield Properties, LLC, Landlord," entered into a "Month to Month Rental Agreement May 15, 2008" with F. Goff, for rental of the Residential Dwelling located at 2230 North Teutonia, Milwaukee, Wisconsin, for May 15, 2008, to May 15, 2009, for $495.00 per month. (CX 7, 61-64).

4908 North 40th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2008
Counts 5, 12, 18, 24, 31

On January 1, 2008, Respondent "Brumfield Properties, LLC, Landlord," entered into a Rent Agreement with E. Moore for rental of the Residential Dwelling located at 4908 North 40th Street, Milwaukee, Wisconsin, for January 1, 2008, to December 31, 2008, for $495.00 - $550.00 per month. (CX 7, 90).

2230 North Teutonia Road, Milwaukee, Wisconsin
Lease dated March 1, 2007
Counts 3, 10, 16, 22, 29

On March 1, 2007, "Dessie Brumfield, Landlord," entered into a Rent Agreement with D. Lindsey, for rental of the Residential Dwelling located at 2230 North Teutonia, Milwaukee, Wisconsin, for March 1, 2007, to December 30, 2007, for $495.00 per month. (CX 7, 65).

4908 North 40th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2009
Counts 6, 13, 19, 25, 32

On January 1, 2009, "Brumfield Properties, LLC, Landlord," entered into a "YEARLY LEASE AGREEMENT JANUARY 1, 2009" with A. Thompson, for rental of the Residential Dwelling located at 4908A North 40th Street, Milwaukee, Wisconsin, for January 1, 2009, to January 1, 2010, for $550.00 per month. (CX 7, 83- 88).

2428 West Brown Street, Milwaukee, Wisconsin
Lease, Dated April 15, 2008
Counts 2, 9, 15, 21, 28

On April 15, 2008, Dessie Brumfield d/b/a/ Brumfield Properties, Owner," entered into a "RENTAL AGREEMENT" for rental of the Residential Dwelling located at 2428 West Brown Street, Milwaukee, Wisconsin, for April 15, 2008 to April 15, 2009, for $725.00 per month. (CX 7, 95-102).

The Complaint alleged that on these dates Respondent entered into these written lease agreements or contracts with individuals for the lease of these Respondent Residential Dwellings. (Complaint, Par. 23). The Complaint also alleged that each of these lease agreements or contracts covered a term of occupancy greater than 100 days. (Complaint, Par. 24). Respondent's failure to admit, deny, or explain any material allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).Therefore, Respondent was the "lessor" and the renters were the "lessees" of these leases, as those terms are defined at 40 C.F.R. § 745.103.

D. Respondent Violated the Lead Disclosure Rule as Alleged in the Complaint

On May 21, 2009, Respondent provided Complainant with copies of leases for her Residential Dwellings. (CX 7). These leases speak for themselves.

Complainant also provided the court and Respondent with witnesses Jim O'Neil, Ed Pilny, Maureen O'Neil, and Pamela Grace to testify to their acquisition, review, and analysis of these leases, as well as other documents, to explain the basis of Complainant's factual allegations, legal conclusions, and proposed civil penalty.

Counts 1-6
Six of Respondent's Leases Failed to Provide the Lead Warning Statement
40 C.F.R. § 745.113(b)(1)

Complainant alleged in Counts 1-6 of the complaint, and demonstrated at hearing, Respondent failed to include within six contracts or as an attachment to six contracts to lease target housing the Lead Warning Statement in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. §2689, and 42 U.S.C. § 4852d(b)(5).

The required Lead Warning Statement must state:

> 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 known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

The Lead Warning Statement is intended to provide a warning to prospective tenants that pre-1978 properties may contain lead-based paint, and that lead exposure can be harmful to pregnant women and children. It also summarizes the obligations of landlords to provide certain information to prospective tenants under the Lead Disclosure Rule. 40 C.F.R. § 745.113(b)(1).

Count 1

Ms. Grace reviewed Respondent's lease for 3463 North 13th Street, Milwaukee, Wisconsin, dated November 20, 2008, and December 1, 2008. (CX 7, 73-81; Tr. 171).

She testified she found the lease dated December 1, 2008, and an attached TSCA Lead Disclosure Form signed one day later by lessee on December 2, 2008. (CX 7, 73-81; Tr. 171). She found Respondent's lease failed to provide lessee with any lead-based paint or lead-based paint hazard information or other associated information prior to lessee's obligation under the lease. (Tr. 171).

The lease also reflected A. Rush and L. Evans resided in the residential dwelling, and maybe with three children. (CX 7, 74).

Count 2

Ms. Grace reviewed Respondent's lease for 2428 West Brown Street, Milwaukee, Wisconsin, dated April 15, 2008. (CX 7, 95-102; Tr. 180).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a TSCA Lead Warning Statement. (CX 7, 73-81; Tr. 181).

The lease demonstrated the lessee was C. Garrison, who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96).

The testimony of Respondent demonstrated the lessee was C. Garrison, who used the residential dwelling as a child daycare center. (Tr. 244, 245, 191, 204, 211).

Count 3

Ms. Grace reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated March 1, 2007. (CX 7, 65; Tr. 175).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a TSCA Lead Warning Statement. (CX 7, 65; Tr. 176).

Count 4

Ms. Grace reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated May 15, 2008. (CX 7, 61-64; Tr. 173).

She found it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a TSCA Lead Warning Statement. (CX 7, 61-64; Tr. 174).

The lease also reflected F.M. Goff resided in the residential dwelling, and maybe with two children. (CX 7, 62).

Count 5

Ms. Grace reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2008. (CX 7, 90; Tr. 174).

She found it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a TSCA Lead Warning Statement. (CX 7, 90; Tr. 175).

Count 6

Ms. Grace reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2009. (CX 7, 83-88; Tr. 178).

She found it failed to attach a TSCA Lead Disclosure Form, including a TSCA Lead Warning Statement. (CX 7, 83-88; Tr. 178, 179).

The lease also reflected lessee was A. Thompson who in fact resided in the residential dwelling with D. Thompson, two years of age, and maybe a second child. (CX 7, 87, 84).

Therefore, Respondent failed to include within six contracts or as an attachment to six contracts to lease target housing the Lead Warning Statement in violation of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. §2689, and 42 U.S.C. § 4852d(b)(5).

Counts 7-13
Seven of Respondent's Leases Failed to Disclose Knowledge of Lead-Based Paint
40 C.F.R. § 745.113(b)(2)

Complainant alleged in Counts 7-13 of the Complaint, and demonstrated at hearing,Respondent failed to include within each contract or as an attachment to each contract to lease target housing, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence pursuant to 40 C.F.R. § 745.113(b)(2), in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

The lessor's disclosure statement is intended to provide a description of what the landlord knows about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2). In the preamble to the Lead Disclosure Rule regulations, EPA and HUD included a sample disclosure format for the lessor's disclosure statement. 61 Fed. Reg. 9075.

The lessor's failure to provide a prospective tenant with the lessor's disclosure statement is different than the lessor's failure to provide a Lead Warning Statement because the Lead Warning Statement is primarily educational, alerting tenants and putting tenants on notice of the potential issue of lead-based paint in their units, while the lessor's disclosure statement requires the lessor to provide actual information about lead-based paint hazards in the building being rented, as well as the basis for such knowledge.

Count 7

Ms. Grace testified she reviewed Respondent's lease for 3072 North 28th Street, Milwaukee, Wisconsin, dated January 1, 2009. (CX 7, 67-72; Tr. 166).

She testified the lease attached a TSCA Lead Disclosure Form which stated, ""Landlord's Disclosure: City of Milwaukee has set a date of 11/3/06 for cleaning the house of lead paint." (CX 7, 71; Tr. 167). However, she testified the attached TSCA Lead Disclosure form also stated "Landlord has no knowledge of lead-based paint and/or lead-based paint hazards in the housing." (CX 7, pp. bates-stamped 71; Tr. 167).

Ms. Grace testified, therefore, Respondent failed to disclose to lessee clearly lessor's knowledge of lead-based paint in the residential dwelling, since the attached TSCA Lead Disclosure Form provided information about lead-based paint hazards, and a second and inconsistent statement that Respondent had no knowledge of lead-based paint or lead-based paint hazards in the residential dwelling. (Tr. 167).

The lease also reflected lessees G. Carter and T. Carter resided in the residential dwelling, with perhaps as many as two children. (CX 7, 68).

Count 8

Ms. Grace testified she reviewed Respondent's lease for 3463 North 13th Street, Milwaukee, Wisconsin, dated November 20, 2008, and December 1, 2008. (CX 7, 73-81; Tr. 171).

She found the lease dated December 1, 2008, and an attached TSCA Lead Disclosure Form signed one day later by lessee on December 2, 2008. (CX 7, 81; Tr. 171). She found Respondent's lease failed to provide lessee with any lead-based paint or lead-based paint hazard information or other associated information prior to lessee's obligation under the lease. (Tr. 171).

She also testified the lease attached a TSCA Lead Disclosure Form which stated ""Landlord's Disclosure: City of Milwaukee has set a date of 11/3/06 for cleaning the house of lead paint." (CX 7, 81; Tr. 172). However, she testified the attached TSCA Lead Disclosure form also stated "Landlord has no knowledge of lead-based paint and/or lead-based paint hazards in the housing." (CX 7, 81; Tr. 172).

Ms. Grace testified, therefore, Respondent also failed to disclose to lessee clearly lessor's knowledge of lead-based paint in the residential dwelling, since the attached TSCA Lead Disclosure Form provided information about lead-based paint hazards, and a second and inconsistent statement that Respondent had no knowledge of lead-based paint or lead-based paint hazards in the residential dwelling. (Tr. 172).

The lease also reflected A. Rush and L. Evans resided in the residential dwelling, and maybe with three children. (CX 7, 74).

Count 9

Ms. Grace testified she reviewed Respondent's lease for 2428 West Brown Street, Milwaukee, Wisconsin, dated April 15, 2008. (CX 7, 95-102; Tr. 180).

She found it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the Respondent disclosing the presence of 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. (Tr. 181).

The lease demonstrated the lessee was C. Garrison, who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96).

The testimony of Respondent demonstrated the lessee was C. Garrison, who used the residential dwelling as a child daycare center. (Tr. 244, 245, 191, 204, 211).

Count 10

Ms. Grace testified she Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated March 1, 2007. (CX 7, 65; Tr. 175).

She found it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the Respondent disclosing the presence of 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. (Tr. 176).

Count 11

Ms. Grace testified she reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated May 15, 2008. (CX 7, 61-64; Tr. 173).

She found it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the Respondent disclosing the presence of 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. (Tr. 174).

The lease also reflected F.M. Goff resided in the residential dwelling, and maybe with two children. (CX 7, 62).

Count 12

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2008. (CX 7, 90; Tr. 174).

She found it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the Respondent disclosing the presence of 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. (Tr. 175).

Count 13

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2009. (CX 7, 83-88; Tr. 178).

She found it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the Respondent disclosing the presence of 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. (Tr. 178).

The lease also reflected lessee was A. Thompson who in fact resided in the residential dwelling with D. Thompson, two years of age, and maybe a second child. (CX 7, 87, 84).

Therefore, Respondent failed to include within each contract or as an attachment to each contract to lease target housing, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence pursuant to 40 C.F.R. § 745.113(b)(2), in violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 14-19
Six of Respondent's Leases
Failed to List Records or Reports of Lead-Based Paint or Lead-Based Paint Hazards
40 C.F.R. § 745.113(b)(3)

Complainant alleged in Counts 14-19 of the complaint, and demonstrated at hearing, Respondent failed to include within each contract or as an attachment to each contract to lease

target housing, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 14

Ms. Grace testified she reviewed Respondent's lease for 3463 North 13th Street, Milwaukee, Wisconsin, dated November 20, 2008, and December 1, 2008. (CX 7, 73-81; Tr. 171).

On or about September 16, 2002, The City of Milwaukee Health Department, Childhood Lead Poisoning Prevention Program, issued to Respondent an "ORDER TO CORRECT CONDITIONS ON PREMISES" for her residential dwelling located at 3463 North 13th Street, Milwaukee, Wisconsin. (CX 7, 55-58). The Order specifically stated, "[A] risk assessment at the above address disclosed the presence of deteriorated lead-based paint. Left unchecked these surfaces may cause lead poisoning. You may be liable for damages to children if they become exposed as a result of your negligence." (CX 7, 55). The Order required Respondent to address lead-based paint hazards on 14 windows. (CX 7, 56). The Order also stated, "This record of lead-based paint hazards must be made available to purchasers and tenants under the federal residential Lead-Based Paint Hazard Act. Failure to disclose this information may result in a fine of up to $11,000." (CX 7, 55).

However, notwithstanding this clear Order, Respondent's lease attached a TSCA Disclosure Form which stated "Landlord has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing." (CX 7, 73-81).

Ms. Grace also testified found the lease dated December 1, 2008, and an attached TSCA Lead Disclosure Form signed one day later by lessee on December 2, 2008. (CX 7, 73-81; Tr. 171). She found Respondent's lease failed to provide lessee with any lead-based paint or lead-based paint hazard information or other associated information prior to lessee's obligation under the lease. (Tr. 171).

The lease also reflected A. Rush and L. Evans resided in the residential dwelling, and maybe with three children. (CX 7, 74).

Count 15

Ms. Grace testified she reviewed Respondent's lease for 2428 West Brown Street, Milwaukee, Wisconsin, dated April 15, 2008. (CX 7, 95-102; Tr. 181).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including 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 were provided to lessee, or failed to indicate such records or reports were unavailable. (Tr. 181).

The lease demonstrated the lessee was C. Garrison, who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96).

The testimony of Respondent demonstrated the lessee was C. Garrison, who used the residential dwelling as a child daycare center. (Tr. 244, 245, 191, 204, 211).

Count 16

Ms. Grace testified she reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated March 1, 2007. (CX 7, 65; Tr. 175).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including 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 were provided to lessee, or failed to indicate such records or reports were unavailable. (Tr. 175).

Count 17

Ms. Grace testified she reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated May 15, 2008. (CX 7, 61-64; Tr. 173).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including 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 were provided to lessee, or failed to indicate such records or reports were unavailable. (Tr. 174).

The lease also reflected F.M. Goff resided in the residential dwelling, and maybe with two children. (CX 7, 62).

Count 18

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2008. (CX 7, 90; Tr. 174).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including 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 were provided to lessee, or failed to indicate such records or reports were unavailable. (Tr. 175).

Count 19

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2009. (CX 7, 83-88; Tr. 178).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including 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 were provided to lessee, or failed to indicate such records or reports were unavailable. (Tr. 175).

The lease also reflected lessee was A. Thompson who in fact resided in the residential dwelling with D. Thompson, two years of age, and maybe a second child. (CX 7, 87, 84).

Therefore, Respondent failed to include within these six contracts or as an attachment to these six contracts to lease target housing, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. §2689, and 42 U.S.C. § 4852d(b)(5).

Counts 20-25
Six of Respondent's Leases Failed to Include a Lessee Statement Affirming Receipt of Respondent's Disclosure Statement, Respondent's List of any Records or Reports of Lead-Based Paint or Hazards, and the Lead Hazard Information Pamphlet
40 C.F.R. § 745.113(b)(4)

Complainant alleged in Counts 20-25 of the Complaint, and demonstrated at hearing, Respondent failed to include within each contract or as an attachment to each contract to lease target housing, a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard

Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 45.113(b)(4), 15 U.S.C. §2689, and 42 U.S.C. § 4852d(b)(5).

The U.S. Congress mandated The Lead Hazard Information Pamphlet and the U.S. Environmental Protection Agency published it. As explained in the Federal Register Notice of the availability of the Lead Hazard Information Pamphlet:

> Under the Congressional mandate in section 406(a) of TSCA, EPA has developed a final lead hazard information pamphlet. Congress specifically required that the pamphlet: (1) Contain information regarding the health risks associated with exposure to lead; (2) provide information on the presence of lead-based paint hazards in Federally-assisted, Federally-owned, and target housing; (3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation (of target housing), and others residing in a dwelling with lead-based paint hazards; (4) describe the risks of renovation in a dwelling with lead-based paint hazards; (5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards; (6) advise persons how to obtain a list of contractors certified pursuant to TSCA section 402 in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used; (7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing; (8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and (9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

60 Fed. Reg. 39167 (August 1, 1995).

Count 20

Ms. Grace testified she reviewed Respondent's lease for 3463 North 13th Street, Milwaukee, Wisconsin, dated November 20, 2008, and December 1, 2008. (CX 7, 73-81; Tr. 171).

The lease attached a TSCA Lead Disclosure Form that failed to provide either lessees' initials. (CX 7, 81).

Ms. Grace also testified she found the lease dated December 1, 2008, and an attached TSCA Lead Disclosure Form signed one day later by lessee on December 2, 2008. (CX 7, 81; Tr. 171). She testified, therefore, Respondent's lease failed to provide lessee with any lead-based paint or lead-based paint hazard information or other associated information prior to lessee's obligation under the lease. (Tr. 171).

The lease also reflected A. Rush and L. Evans resided in the residential dwelling, and maybe with three children. (CX 7, 74).

Count 21

Ms. Grace testified she reviewed Respondent's lease for 2428 West Brown Street, Milwaukee, Wisconsin, dated April 15, 2008. (CX 7, 95-102; Tr. 181).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4) prior to lessee's obligation under the lease. (CX 7, 95-102; Tr. 181).

The lease demonstrated the lessee was C. Garrison, who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96).

The testimony of Respondent demonstrated the lessee was C. Garrison, who used the residential dwelling as a child daycare center. (Tr. 244, 245, 191, 204, 211).

Count 22

Ms. Grace testified she reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated March 1, 2007. (CX 7, 65; Tr. 175).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4) prior to lessee's obligation under the lease. (Tr. 176).

Count 23

Ms. Grace testified she reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated May 15, 2008. (CX 7, 61-64; Tr. 173).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4) prior to lessee's obligation under the lease. (Tr. 174).

The lease also reflected F.M. Goff resided in the residential dwelling, and maybe with two children. (CX 7, 62).

Count 24

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2008. (CX 7, 90; Tr. 174).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4) prior to lessee's obligation under the lease. (Tr. 175).

Count 25

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2009. (CX 7, 83-88; Tr. 178).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4) prior to lessee's obligation under the lease. (Tr. 178).

The lease also reflected lessee was A. Thompson who in fact resided in the residential dwelling with D. Thompson, two years of age, and maybe a second child. (CX 7, 87, 84).

Therefore, Respondent failed to include within these six contracts or as an attachment to these six contracts to lease target housing, a statement by the lessee affirming receipt of the

lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 26-32
Seven of Respondent's Leases Failed to Include a Lessee Statement Affirming Receipt of Respondent's Disclosure Statement, Respondent's List of any Records or Reports of Lead-Based Paint or Hazards, and the Lead Hazard Information Pamphlet
40 C.F.R. § 745.113(b)(4)

Complainant alleged in Counts 26-32 of the Complaint, and demonstrated at hearing, Respondent failed to include, either within each contract or as an attachment to each contract to lease target housing, 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, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

The requirement to have an acknowledgment by the lessee of receipt of the lessor's disclosure information, a list of related records and reports, and the Lead Hazard Information Pamphlet under 40 C.F.R. § 754.113(b)(4) is a separate and distinct regulatory requirement from the requirement in 40 C.F.R. § 745.113(b)(6) which requires that the lessor, lessee and agent certify to the truth and accuracy of the information provided and received by having each party sign and date such certification. The lessee's acknowledgment under § 745.113(b)(4) is a statement which, in the sample disclosure form included in the Lead Disclosure Rule preamble, may be demonstrated by initialing the form.

The parties certification under § 745.113(b)(6) includes both signatures and dates which provide a record of when the required information was provided so that EPA and HUD can determine whether the disclosures were indeed made prior to the tenant become obligated under the lease. (*See* the example disclosure form for leasing transactions in the preamble to the Lead Disclosure Rule at 61 Fed. Reg. 9075 that shows the lessee's acknowledgment of required information to be indicated by initials, and provides lines for signatures and dates by the lessor(s), lessee(s) and agent(s)). Without the lessee's acknowledgment required by Section 745.113(b)(4), any certification is incomplete. Without the dates and signatures of the parties certifying to the truth and accuracy of the information provided as required by 40 C.F.R. § 745.113(b)(6), the regulatory agencies are unable to use the records to ascertain compliance by lessors and must use limited resources to contact individual tenants to determine compliance. As noted in the preamble to the Lead Disclosure Rule, ". . . the completion and retention of disclosure and acknowledgment language is a necessary component of any effective, enforceable disclosure requirement for leasing transactions." (61 Fed. Reg. 9071.) Without dated and signed certifications, EPA could not rely on the records required to be maintained to demonstrate compliance with the Lead Disclosure Rule which would result in EPA having to seek out each tenant to ascertain whether the lessor complied with the Lead Disclosure Rule requirements for that tenant's transaction. Such a result would eviscerate the enforceability of this regulatory program.

Count 26

Ms. Grace testified she reviewed Respondent's lease for 3072 North 28th Street, Milwaukee, Wisconsin, dated January 1, 2009. (CX 7, 67-72; Tr. 166).

She testified the lease was dated December 1, 2008, and the attached TSCA Lead Disclosure Form was signed but undated. (CX 7, 71; Tr. 168).

The lease also reflected lessees G. Carter and T. Carter resided in the residential dwelling, and maybe with two children. (CX 7, 68).

Count 27

Ms. Grace testified she reviewed Respondent's lease for 3463 North 13th Street, Milwaukee, Wisconsin, dated November 20, 2008, and December 1, 2008. (CX 7, 73-81; Tr. 171).

Ms. Grace testified she found the lease dated December 1, 2008, and an attached TSCA Lead Disclosure Form signed one day later by lessee on December 2, 2008. (CX 7, 81; Tr. 171).

She testified, therefore, the lease failed to provide lessee with any lead-based paint or lead-based paint hazard information or other associated information prior to lessee's obligation under the lease. (Tr. 171).

The lease also reflected A. Rush and L. Evans resided in the residential dwelling, and maybe with three children. (CX 7, 74).

Count 28

Ms. Grace testified she reviewed Respondent's lease for 2428 West Brown Street, Milwaukee, Wisconsin, dated April 15, 2008. (CX 7, 95-102; Tr. 181).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature. (CX 7, 95-102; Tr. 181).

The lease demonstrated the lessee was C. Garrison, who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96).

Count 29

Ms. Grace testified she reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated March 1, 2007. (CX 7, 65; Tr. 175).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease, including lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature. (Tr. 176).

The lease also reflected A. Rush and L. Evans resided in the residential dwelling, and maybe with three children. (CX 7, 74).

Count 30

Ms. Grace testified she reviewed Respondent's lease for 2230 North Teutonia Road, Milwaukee, Wisconsin, dated May 15, 2008. (CX 7, 61-64; Tr. 173).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease. (Tr. 174).

The lease also reflected F.M. Goff resided in the residential dwelling, and maybe with two children. (CX 7, 62).

Count 31

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2008. (CX 7, 90; Tr. 174).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease. (Tr. 175).

Count 32

Ms. Grace testified she reviewed Respondent's lease for 4908 North 40th Street, Milwaukee, Wisconsin, dated January 1, 2009. (CX 7, 83-88; Tr. 178).

She testified it failed to attach a TSCA Lead Disclosure Form or provide similar language within the lease.

The lease also reflected lessee was A. Thompson who in fact resided in the residential dwelling with D. Thompson, two years of age, and maybe a second child. (CX 7, 87, 84).

Therefore, Respondent failed to include within these seven contracts or as an attachment to these six contracts to lease target housing, 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, in violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

E. Specific Witness Testimony Proposed as Fact

James O' Neil

Mr. O'Neil testified he earned a B.S. in Marketing from the University of Illinois in 1968. (Tr. 26). He was: General Manager, High Part Services, Baton Rouge, Lousiana, (Tr. 25); Director of Manufacturing, Omnitech International, Thibodeau, Lousiana, (Tr. 25); Materials Manager, Kraft Chemical, Melrose Park, Illinois, (Tr. 24); and Marketing and Sales Manager, America Resource Recovery, Maywood, Illinois, (Tr. 24).

Mr. O'Neil testified that in 2001 he became an Inspector for the Pesticide and Toxic Section, Land and Chemicals Division, Region 5, of the U.S. Environmental Protection Agency. (Tr. 24). He developed inspection targets and completed at least 200 TSCA AHERA or TSCA Lead Disclosure Form Investigations over the past 11 years. (Tr. 27).

Mr. O'Neil testified that he and his office received from the Milwaukee Public Health Department a list of inspections, open orders, and mitigation notices which included Dessie Brumfield. (Tr. 36, 52, 55, 57). He attempted to contact Ms. Brumfield by telephone, but the telephone number was not good. (Tr. 37, 60). On May 11, 2009, he wrote a letter to Ms. Brumfield to schedule with her a TSCA Lead-Based Paint

Disclosure Rule Inspection. (Tr. 38, 39; CX 1, 15–18). On May 13, 2009, Mr. Brumfield contacted him by telephone, they discussed the nature of the Inspection, and agreed to the Inspection. (Tr. 42, 60, 61). He confirmed the inspection date with Ms. Brumfield in writing. (Tr. 42; CX 2, 19–21). On May 21, 2009, Ed Pilny, was the Lead Inspector for the Inspection, and he was the Assistant Inspector for the Inspection at the residence of Ms. Brumfield. (Tr. 47). Ms. Brumfield identified herself. (Tr. 47). Messrs. Pilny and O'Neil provided Ms. Brumfield with their credentials. (Tr. 47). Ms. Brumfield invited them into her residence. (Tr. 47). Messrs. Pilny and O'Neil discussed with Mr. Brumfield the nature of their Inspection and stated they would ask questions and review documents. (T. 47). The Inspection lasted a little over 1 hour, and Ms. Brumfield was professional, cooperative, and congenial. (Tr. 49).

Mr. O'Neil testified he was not a "uniformed officer," and did not complete the Inspection in a "uniform" or with a "badge." (Tr. 53). He explained the Inspection would be a review of lease documents for compliance. (Tr. 54 and 55). He stated he believed Mr. Brumfield was knowledgeable of, and indicated she had knowledge of, the TSCA Lead-Based Paint Disclosure Rule. (Tr. 64). He stated it would be routine at an inspection to ask if all leases and documents for all relevant properties are at this location. (TR. 65).

Ed Pilny

Mr. Pilny testified he earned a B.S. in Civil Engineering from Chicago Technical College in 1971. (Tr. 68.). He began employment with Peoples Gas Light and Coke Company in 1960. (Tr. 69). He began as a Laborer; upon high school graduation became a Junior Engineer; then a Regular Engineer; then a Senior Engineer; then a Supervisory Engineer; then retired in 1995. (Tr. 69).

Mr. Pilny testified that in 1997 he became a Multi-Program Inspector for the Pesticide and Toxic Section, Land and Chemicals Division, Region 5, of the U.S. Environmental Protection Agency. (Tr. 69). He enforced the Toxic Substances Control Act. (Tr. 69). Annually, he completed 100 to 150 TSCA Inspections, including TSCA AHERA Rule and TSCA Lead Disclosure Rule Inspections and corresponding Inspection Reports. (Tr. 72.)

Mr. Pilny testified that around May of 2009, he and his office received from the Milwaukee Public Health Department a list of various lessors, including Ms. Brumfield, which had various lead issues (Tr. 77, 78, 79). James O'Neil scheduled the time and date for the inspection. (Tr. 80). On May 21, 2009, he, the Lead Inspector for the Inspection, and James O'Neil, Assistant Inspector, completed their TSCA Lead Disclosure Form Inspection at the residence of Ms. Brumfield, 3936 North 18th Street, Milwaukee, Wisconsin. (Tr. 83). He and Mr. O'Neil identified themselves to Ms. Brumfield and presented Ms. Brumfield with official identification. (Tr. 85). Mr. Brumfield identified herself to him and Mr. O'Neil. (Tr. 85). He asked Ms. Brumfield if she understood the

nature of the Inspection, and she said she did. (Tr. 86). He asked Ms. Brumfield if she used the TSCA Lead Disclosure Form, and Ms. Brumfield answered "[S]ometimes." (Tr. 86). He asked Mr. Brumfield if all of the relevant leases were located at this facility, to which Ms. Brumfield responded "they were." (Tr. 87, 90, and 110, 111, 112, 113, 114,). Mr. Brumfield provided Mr. Pilny leases. (Tr. 90). He asked if these were all of the leases for her pre-1978 properties, and he asked her if she provided TSCA Lead Disclosure Forms with the leases, and she responded "Yes." (Tr. 90). He asked Mr. Brumfield again if these were all the leases, and began his review. (Tr. 92). He found only 3 TSCA Lead Disclosure Forms among all the leases. (Tr. 92). Mr. Brumfield made a copy of the approximately 11 leases. (Tr. 93). He stated Ms. Brumfield stated those were all the leases she had. (Tr. 93). He stated Ms. Brumfield stated she knew of the TSCA Lead Disclosure Rule since 2003. (Tr. 94).

Dessie L. Brumfield

Respondent stated she was the property owner. (Tr. 5). Respondent testified that she backdated paperwork. (Tr. 204). Respondent testified her paperwork was not in order. (Tr. 205). Respondent did not testify that she did not violate the law, but rather that she did not knowingly violate the law. (Tr. 209). Respondent testified to missing documentation. (Tr. 210). Respondent testified three of her properties were daycare centers. (Tr. 211). Respondent testified Complainant requested from Respondent Respondent's financial information. (Tr. 212). Respondent testified that she herself completed the Application of Incorporation for Brumfield Properties, LLC. (Tr. 213). Respondent testified she was the Registered Agent and Sole Principal for Brumfield Properties, LLC. (Tr. 213). Respondent testified she was the Manager and Operator of Brumfield Properties, LLC. (Tr. 213). Respondent testified she was a Lessor, reviewed documents, and collected leases, rent checks, and money orders, and repaired property. (Tr. 214). Respondent testified she herself completed and filed her own U.S. and State Income Tax Forms. (Tr. 214). Respondent testified that once she " . . . . put and X on all that . . . " for the TSCA Lead Disclosure Forms, " . . . my job was over . . . " (Tr. 217). Respondent then testified "If I failed to, when I got it back, to have it – look and see if they actually did that, yes, I'm guilty of that." (Tr. 217). Respondent then testified "I should have looked at it by the X, like I told them, and said initial here. I have shortcomings just like everybody else, yes, yes, and yes. (Tr. 217). Respondent then testified she believed she was in complete compliance with the TSCA Lead Disclosure Rule, had done nothing wrong, but could have been more thorough. (Tr. 218). Respondent testified she was aware of the TSCA Lead Disclosure Rule in 2003. (Tr. 220). Respondent testified she was in compliance with the TSCA Lead Disclosure Rule in 2003. (Tr. 220). Respondent testified she failed or refused to provide Complainant with a single copy of a single lease with a proper and completed TSCA Lead Disclosure Form, and specifically stated, "Well, no. You know why? 'Cause I'm just an ordinary person." (Tr. 220). Respondent testified she was not in violation of the TSCA Lead Disclosure Rule. (Tr. 221). Respondent testified the leases and TSCA Lead Disclosures Forms she provided to Ed Pilny and Janes O'Neill on May 21, 2009, were in compliance

the TSCA Lead Disclosure Rule. (Tr. 221). Mr. Brumfield testified her March and April Bank Statements are accurate and represent her one bank account which includes Dessie L. Brumfield, personally, and Brumfield Properties, LLC. (Tr. 223, 224). Respondent testified the bank account debits include her personal gambling at Potawatomi Casino. (Tr. 224). Respondent testified the bank account credits include her personal retirement income. (Tr. 225). Respondent testified she still deposits "under my name and Brumfield Properties, same as I did when it was Legacy Bank, even though Seaway only have my business name there[.]" (Tr. 226). Respondent testified she did not have a routine for tenants for signing a lease. (Tr. 245). Respondent testified "[i]t's basically different for each tenant, depending upon what's going on in that tenant's life." (Tr. 245, 247). Respondent testified her provision of the lease varies, but not her provision of the TSCA Lead Disclosure Form. (Tr. 257). Respondent testified to the accuracy of the following statement in her Answer, "[T]he Respondent's practice is, and always has been, to provide the tenant with the lease after payment, along with the above-mentioned document, and is given a seven-day grace period if they change their mind." (Tr. 260). Respondent then testified that how she handled these documents varied from tenant to tenant. (Tr. 260).

V. THE PROPOSED CIVIL PENALTY

The proposed civil penalty is a factual and legal issue. The Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. 40 C.F.R. § 22.27(b). The Presiding Officer shall consider any civil penalty guidelines issued under the Act." 40 C.F.R. § 22.27(b). The Presiding Officer considers the statutory factors provided for by the Act, as well as any EPA penalty policies developed by the Administrator of EPA, to assess the appropriate civil penalty for violations of the Lead Disclosure Rule.

A. The Statutory Civil Penalty Criteria

Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), authorizes the imposition of a civil penalty. Although Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates Section 409 of TSCA "shall be liable to the United States for a civil penalty in an amount not to exceed $25,000.00 for each

such violation," this maximum penalty amount is limited in Lead Disclosure Rule violations by Section 1018(b)(5) of Title X, 42 U.S.C. § 4852d(b)(5), which makes violations of the Lead Disclosure Rule enforceable under Section 409 of TSCA, 15 U.S.C. § 2689, and provides that "[F]or purposes of enforcing this section under the Toxic Substances Control Act . . . the penalty for each violation applicable under Section 16 of TSCA, 15 U.S.C. § 2615, " . . . shall not be more than $10,000.00." Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note; Pub. L. 101-410; 101 Stat. 890, as amended by the Debt Collection Act of 1996, 31 U.S.C. § 3701 note; Pub. L. 104-134; 110 Stat. 1321, EPA issued a final rule adjusting this $10,000.00 figure upward by 10% to $11,000 for violations that occur after July 28, 1997, 62 Fed. Reg. 35037 (June 27, 1997), 40 C.F.R. Part 19.

To determine the amount of a civil penalty for violations of Section 409 of TSCA, 15 U.S.C. § 2689: "the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect 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." 15 U.S.C. § 2615(a)(2)(B).

B. The EPA Civil Penalty Policy and Guidelines

Complainant's "EPA Section 1018 - Disclosure Rule Enforcement Response Policy," dated December 2007, ("the Penalty Policy," and also Complainant Exhibit 8 for this action), for violations of Title X (Enforcement Response Policy) is the applicable penalty policy for the alleged violation in this action. The purpose of the Penalty Policy is to interpret the appropriate provisions of TSCA when addressing violations of the Lead Disclosure Rule, and to provide

procedures to determine the appropriate enforcement response to such violations. CX 8, 3). The ERP is based on the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which are the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, ability to pay, effect of ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require The Penalty Policy was developed under the general framework established by the Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, 45 Fed. Reg. 59770 (1980) (TSCA Civil Penalty Guidelines).

The Penalty Policy begins with the general framework for civil penalty assessments under TSCA published in the Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy, 45 Fed. Reg. 59771 (1980). (CX 8, 6, 9). As noted above, the Guidelines provide a discussion regarding the nature of the violation, i.e., "whether the violation is of a *chemical control, control-associated data gathering,* or *hazard assessment* nature". Guidelines at 59771. The Penalty Policy states that the requirements in 40 C.F.R. Part 745, Subpart F, are most appropriately characterized as "hazard assessment" in nature, as set forth in the Guidelines at 59772, as the regulations "are designed to provide potential purchasers and lessees of target housing with information that will permit them to weigh and assess the risks presented by the actual or possible presence of lead-based paint or lead-based hazards in the target housing they might purchase or lease." (CX 8, 9). In explaining how the "extent" determination is different for hazard assessment regulations, the Guidelines state, "The measure of 'extent' of harm will focus on the goals of the given hazard assessment

regulation, and the types of harm it is designed to prevent . . . Thus, a great number of judgments must be made in the formulation of the specific penalty policy." Guidelines at 59772.

The Guidelines for enforcing TSCA's provisions contemplate a statute with a statutory maximum civil penalty amount of $25,000.00, now $27,500.00 per day per violation. Section 1018 which is enforced through TSCA has a statutory maximum civil penalty amount of $11,000.00. Further, the provisions for enforcing, for example, the regulation of chemicals such as polychlorinated biphenyls (PCBs) will differ from the provisions for enforcing compliance with the Lead Disclosure Rule. However, the drafters contemplated that "a great number of judgments must be made in the formulation of the specific penalty policy," and addressed these matters in the Penalty Policy.

The Complaint filed in this action described the factors Complainant considered to propose its civil penalty for alleged violations of the Complaint, and Complainant provided Respondent a copy of the Penalty Policy at the time it filed its action.

Complainant first calculates a proposed civil penalty by reviewing the nature of the alleged violations, and determining their circumstance levels (the probability of harm resulting from the violations) and extent (degree, range, or scope of the violations potential for harm). The Penalty Policy categorizes each possible violation of 40 C.F.R. Part 745, Subpart F, as being within one of six circumstance levels, (Level 1, the most serious, to Level 6, the least serious), based upon the nature and circumstances surrounding each type of violation and reflecting the probability of harm for each. The Penalty Policy then categorizes each possible violation of 40 C.F.R. Part 745, Subpart F, as being either major, significant, or minor, through the use of an "Extent Category Matrix." The Extent Category Matrix determines the extent category taking

into consideration the following two factors: 1) the age of any children living in the target housing; 2) whether a pregnant woman lives in the target housing. These factors are then applied to a "Gravity-Based Penalty Matrix", which lists varying penalty amounts in 18 cells, ranging in values from $110.00 to $11,000.00. The appropriate cell is determined according to the assigned circumstance level and extent category.

Each requirement of the Lead Disclosure Rule is a separate and distinct requirement from the other requirements. Further, the Environmental Appeals Board recently affirmed the need to evaluate statutory penalty requirements for each violation when assessing penalties for multiple violations by the same entity. *See* In the Matter of John A. Capozzi d/b/a Capozzi Custom Cabinets, Docket N. RCRA-5-2000-005 (October 16, 2003) Order Denying Motion for Reconsideration.

Complainant then adjusts its calculated proposed civil penalty by reviewing the violator's ability to pay the proposed civil penalty or continue in business, history of prior violations, degree of culpability, and such other factors as justice may require, which include the violator's attitude, consideration of supplemental environmental projects, voluntary disclosure, size of business, and the economic benefit of noncompliance.

C. The Calculated Proposed Civil Penalty of $58,060.00

Complainant alleged Respondent and its leases committed 32 violations of 40 C.F.R. Part 745, 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5) and proposed a civil penalty of $58,060.00.

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include timely or clearly, as an attachment or within the lease, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in violation of 40 C.F.R. § 745.113(b)(2), and as alleged in Count 7 of the Complaint. (CX 7, 67-72; Tr. 165-167).

The Penalty Policy designates this failure a Circumstance Level 3 Violation (CX 8, 165), meaning it has a medium impact of impairing the ability to assess the information (CX 8, 148). The lessor's disclosure statement is intended to provide a description of what the landlord knows about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 3 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $770.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 170).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include timely, as an attachment or within the lease, the lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, in violation of 40 C.F.R. § 745.113(b)(6), as alleged in Count 26 of the Complaint. (CX 7, 67-72; Tr. 165-167).

The Penalty Policy designates this failure a Circumstance Level 6 Violation (CX 8, 167), meaning that each of these violations has a low impact on the ability to assess the information

required to be disclosed. (CX 8, 148). The requirement that the signatures, along with the dates of each signature, be included as part of the contract is intended to serve to ensure that each party has certified the truth and accuracy of their statements concerning the transaction. 40 C.F.R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 6 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $130.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 170).

3463 North 13th Street, Milwaukee, Wisconsin,
Lease, Dated November 20, 2008, and December 1, 2008
Counts 1, 8, 14, 20, and 27

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include timely, as an attachment or within the lease, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1), and as alleged in Count 1 of the Complaint. (CX 7, 73-82; Tr. 171).

The Penalty Policy designates the failure to include the Lead Warning Statement a Circumstance Level 2 Violation (CX 8, 165), meaning it has a high probability of impairing the ability to assess the information required to be disclosed (CX 8, 148). This determination is based upon the importance of the Lead Warning Statement to the statutory scheme; the Lead Warning Statement is intended to provide a warning to prospective tenants that pre-1978 properties may contain lead-based paint, and that lead exposure can be harmful to children. It also summarizes the obligations of landlords under the Lead Disclosure Rule. 40 C.F.R. § 745.113(b)(1).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 2 Violation, and a Minor Extent Violation since the residents were neither pregnant women nor children, and proposed a civil penalty of $1,550.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include timely or clearly, as an attachment or within the lease, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in violation of 40 C.F.R. § 745.113(b)(2), and as alleged in Count 8 of the Complaint. (CX 7, 73-82; Tr. 171).

The Penalty Policy designates this failure a Circumstance Level 3 Violation (CX 8, 165), meaning it has a medium impact of impairing the ability to assess the information (CX 8, 148). The lessor's disclosure statement is intended to provide a description of what the landlord knows about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 3 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $770.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include timely, as an attachment or within the lease, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), and as alleged in Count 14 of the Complaint. (CX 7, 73-82; Tr. 171).

The Penalty Policy designates this failure a Circumstance Level 5 Violation (CX 8, 166), meaning it has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 5 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $260.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 745.113(b)(4), and as alleged in Count 20 of the Complaint. (CX 7, 73-82; Tr. 171).

The Penalty Policy designates this failure as a Circumstance Level 4 Violation (CX 8, 166), meaning it has a medium impact on the ability to assess the information (CX 8, 148). The lessee's affirmation of receipt is intended to acknowledge that the prospective tenant has received certain required information before entering into the lease. 40 C. F. R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 4 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $520.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include timely, as an attachment or within the lease, the lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, in violation of 40 C.F.R. § 745.113(b)(6), as alleged in Count 27 of the Complaint. (CX 7,73-82; Tr. 171).

The Penalty Policy designates this failure a Circumstance Level 6 Violation (CX 8, 167), meaning that each of these violations has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148). The requirement that the signatures, along with the dates of each signature, be included as part of the contract is intended to serve to ensure that each party has certified the truth and accuracy of their statements concerning the transaction. 40 C.F.R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 6 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $130.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

2230 North Teutonia, Milwaukee, Wisconsin,
Lease, Dated May 15, 2008
Counts 4, 11, 17, 23, and 30

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1), and as alleged in Count 4 of the Complaint. (CX 7, 61-64; Tr. 173-174).

The Penalty Policy designates the failure to include the Lead Warning Statement a Circumstance Level 2 Violation (CX 8, 165), meaning it has a high probability of impairing the ability to assess the information required to be disclosed (CX 8, 148). This determination is based upon the importance of the Lead Warning Statement to the statutory scheme; the Lead Warning Statement is intended to provide a warning to prospective tenants that pre-1978 properties may contain lead-based paint, and that lead exposure can be harmful to children. It also summarizes the obligations of landlords under the Lead Disclosure Rule. 40 C.F.R. § 745.113(b)(1).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 2 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $1,550.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of

knowledge of such presence, in violation of 40 C.F.R. § 745.113(b)(2), and as alleged in Count 11 of the Complaint. (CX 7, 61-64; Tr. 173-174).

The Penalty Policy designates this failure a Circumstance Level 3 Violation (CX 8, 165), meaning it has a medium impact of impairing the ability to assess the information (CX 8, 148). The lessor's disclosure statement is intended to provide a description of what the landlord knows about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 3 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $770.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), and as alleged in Count 17 of the Complaint. (CX 7, 61-64; Tr. 173-174).

The Penalty Policy designates this failure a Circumstance Level 5 Violation (CX 8, 166), meaning it has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 5 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $260.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 745.113(b)(4), and as alleged in Count 23 of the Complaint. (CX 7, 61-64; Tr. 173-174).

The Penalty Policy designates this failure as a Circumstance Level 4 Violation (CX 8, 166), meaning it has a medium impact on the ability to assess the information. (CX 8, 148). The lessee's affirmation of receipt is intended to acknowledge that the prospective tenant has received certain required information before entering into the lease. 40 C. F. R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 4 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $520.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, in violation of 40 C.F.R. § 745.113(b)(6), as alleged in Count 30 of the Complaint. (CX 7, 61-64; Tr. 173-174).

The Penalty Policy designates this failure a Circumstance Level 6 Violation (CX 8, 167), meaning that each of these violations has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148). The requirement that the signatures, along with the dates of each signature, be included as part of the contract is intended to serve to ensure that each party has certified the truth and accuracy of their statements concerning the transaction. 40 C.F.R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 6 Violation, and a Minor Extent Violation since it was not clear the residents were either pregnant women or children, and proposed a civil penalty of $130.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

4908 North 40th Street, Milwaukee, Wisconsin,
Lease, Dated January 1, 2008
Counts 5, 12, 18, 24, and 31

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1), and as alleged in Count 5 of the Complaint. (CX 7, 90; Tr. 174-175).

The Penalty Policy designates the failure to include the Lead Warning Statement a Circumstance Level 2 Violation (CX 8, 165), meaning it has a high probability of impairing the ability to assess the information required to be disclosed (CX 8, 148). This determination is based upon the importance of the Lead Warning Statement to the statutory scheme; the Lead Warning Statement is intended to provide a warning to prospective tenants that pre-1978 properties may contain lead-based paint, and that lead exposure can be harmful to children. It also summarizes the obligations of landlords under the Lead Disclosure Rule. 40 C.F.R. § 745.113(b)(1).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 2 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $1,550.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in violation of 40 C.F.R. § 745.113(b)(2), and as alleged in Count 12 of the Complaint. (CX 7, 90; Tr. 174-175).

The Penalty Policy designates this failure a Circumstance Level 3 Violation (CX 8, 165), meaning it has a medium impact of impairing the ability to assess the information (CX 8, 148). The lessor's disclosure statement is intended to provide a description of what the landlord knows

about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 3 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $770.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), and as alleged in Count 18 of the Complaint. (CX 7, 90; Tr. 174-175).

The Penalty Policy designates this failure a Circumstance Level 5 Violation (CX 8, 166), meaning it has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 5 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $260.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 745.113(b)(4), and as alleged in Count 24 of the Complaint. (CX 7, 90; Tr. 174-175).

The Penalty Policy designates this failure as a Circumstance Level 4 Violation (CX 8, 166), meaning it has a medium impact on the ability to assess the information. (CX 8, 148). The lessee's affirmation of receipt is intended to acknowledge that the prospective tenant has received certain required information before entering into the lease. 40 C. F. R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 4 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $520.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, in violation of 40 C.F.R. § 745.113(b)(6), as alleged in Count 31 of the Complaint.

(CX 7, 90; Tr. 174-175).

The Penalty Policy designates this failure a Circumstance Level 6 Violation (CX 8, 167), meaning that each of these violations has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148). The requirement that the signatures, along with the dates of each signature, be included as part of the contract is intended to serve to ensure that each party has certified the truth and accuracy of their statements concerning the transaction. 40 C.F.R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 6 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $130.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

2230 North Teutonia Road, Milwaukee, Wisconsin
Lease, Dated March 1, 2007
Counts 3, 10, 16, 22, 29

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1), and as alleged in Count 3 of the Complaint. (CX 7, 65; Tr. 175-176).

The Penalty Policy designates the failure to include the Lead Warning Statement a Circumstance Level 2 Violation (CX 8, 165), meaning it has a high probability of impairing the ability to assess the information required to be disclosed (CX 8, 148). This determination is based upon the importance of the Lead Warning Statement to the statutory scheme; the Lead Warning Statement is intended to provide a warning to prospective tenants that pre-1978 properties may contain lead-based paint, and that lead exposure can be harmful to children. It

also summarizes the obligations of landlords under the Lead Disclosure Rule. 40 C.F.R. § 745.113(b)(1).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 2 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $1,550.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in violation of 40 C.F.R. § 745.113(b)(2), and as alleged in Count 10 of the Complaint. (CX 7, 65; Tr. 175-176).

The Penalty Policy designates this failure a Circumstance Level 3 Violation (CX 8, 165), meaning it has a medium impact of impairing the ability to assess the information (CX 8, 148). The lessor's disclosure statement is intended to provide a description of what the landlord knows about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 3 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $770.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), and as alleged in Count 16 of the Complaint. (CX 7, 65; Tr. 175-176).

The Penalty Policy designates this failure a Circumstance Level 5 Violation (CX 8, 166), meaning it has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 5 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $260.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 745.113(b)(4), and as alleged in Count 22 of the Complaint. (CX 7, 65; Tr. 175-176).

The Penalty Policy designates this failure as a Circumstance Level 4 Violation (CX 8, 166), meaning it has a medium impact on the ability to assess the information. (CX 8, 148). The lessee's affirmation of receipt is intended to acknowledge that the prospective tenant has received certain required information before entering into the lease. 40 C. F. R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 4 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant women nor children, and proposed a civil penalty of $520.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, in violation of 40 C.F.R. § 745.113(b)(6), as alleged in Count 29 of the Complaint. (CX 7, 65; Tr. 175-176).

The Penalty Policy designates this failure a Circumstance Level 6 Violation (CX 8, 167), meaning that each of these violations has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148). The requirement that the signatures, along with the dates of each signature, be included as part of the contract is intended to serve to ensure that each party has certified the truth and accuracy of their statements concerning the transaction. 40 C.F.R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 6 Violation, and a Minor Extent Violation since it appeared the residents were neither pregnant

women nor children, and proposed a civil penalty of $130.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 177).

4908 North 40th Street, Milwaukee, Wisconsin
Lease, Dated January 1, 2009
Counts 6, 13, 19, 25, and 32

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1), and as alleged in Count 6 of the Complaint. (CX 7, 83-88; Tr. 178-179).

The Penalty Policy designates the failure to include the Lead Warning Statement a Circumstance Level 2 Violation (CX 8, 165), meaning it has a high probability of impairing the ability to assess the information required to be disclosed (CX 8, 148). This determination is based upon the importance of the Lead Warning Statement to the statutory scheme; the Lead Warning Statement is intended to provide a warning to prospective tenants that pre-1978 properties may contain lead-based paint, and that lead exposure can be harmful to children. It also summarizes the obligations of landlords under the Lead Disclosure Rule. 40 C.F.R. § 745.113(b)(1).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 2 Violation, and a Major Extent Violation since one resident, D. Thompson, was a two-year old child, and proposed a civil penalty of $10,320.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 179-180).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor's statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in violation of 40 C.F.R. § 745.113(b)(2), and as alleged in Count 13 of the Complaint. (CX 7, 83-88; Tr. 178-179).

The Penalty Policy designates this failure a Circumstance Level 3 Violation (CX 8, 165), meaning it has a medium impact of impairing the ability to assess the information (CX 8, 148). The lessor's disclosure statement is intended to provide a description of what the landlord knows about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 3 Violation, and a Major Extent Violation since one resident, D. Thompson, was a two-year old child, and proposed a civil penalty of $7,740.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 179-180).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), and as alleged in Count 19 of the Complaint. (CX 7, 83-88; Tr. 178-179).

The Penalty Policy designates this failure a Circumstance Level 5 Violation (CX 8, 166), meaning it has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 5 Violation, and a Major Extent Violation since one resident, D. Thompson, was a two-year old child, and proposed a civil penalty of $2,580.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 179-180).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 745.113(b)(4), and as alleged in Count 25 of the Complaint. (CX 7, 83-88; Tr. 178-179).

The Penalty Policy designates this failure as a Circumstance Level 4 Violation (CX 8, at p. bates-stamped 166), meaning it has a medium impact on the ability to assess the information. (CX 8, 148). The lessee's affirmation of receipt is intended to acknowledge that the prospective tenant has received certain required information before entering into the lease. 40 C. F. R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 4 Violation, and a Major Extent Violation since one resident, D. Thompson, was a two-year old

child, and proposed a civil penalty of $5,160.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 179-180).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, in violation of 40 C.F.R. § 745.113(b)(6), as alleged in Count 32 of the Complaint. (CX 7, 83-88; Tr. 178-179).

The Penalty Policy designates this failure a Circumstance Level 6 Violation (CX 8, 167), meaning that each of these violations has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148). The requirement that the signatures, along with the dates of each signature, be included as part of the contract is intended to serve to ensure that each party has certified the truth and accuracy of their statements concerning the transaction. 40 C.F.R. § 745.113(b)(6).

Accordingly, Ms. Grace testified Respondent's failure was a Circumstance Level 6 Violation, and a Major Extent Violation since one resident, D. Thompson, was a two-year old child, and proposed a civil penalty of $$1,290.00, pursuant to the Gravity-Based Penalty Matrix (for violations occurring on or after March 15, 2004) of the Penalty Policy (CX 8, 168). (Tr. 179-180).

2428 West Brown Street, Milwaukee, Wisconsin
Lease, Dated April 15, 2008
Counts 2, 9, 15, 21, and 28

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1), and as alleged in Count 2 of the Complaint. (CX 7, 95-102; Tr. 180-181).

The Penalty Policy designates the failure to include the Lead Warning Statement a Circumstance Level 2 Violation (CX 8, 165), meaning it has a high probability of impairing the ability to assess the information required to be disclosed (CX 8, 148). This determination is based upon the importance of the Lead Warning Statement to the statutory scheme; the Lead Warning Statement is intended to provide a warning to prospective tenants that pre-1978 properties may contain lead-based paint, and that lead exposure can be harmful to children. It also summarizes the obligations of landlords under the Lead Disclosure Rule. 40 C.F.R. § 745.113(b)(1).

Ms. Grace testified Respondent's failure was a Circumstance Level 2 Violation, and a Significant Extent Violation since one occupant of the residential dwelling appeared to be between the ages of 7 and 18, and proposed a civil penalty of $6,450.00. (Tr. 182). However, she further testified Respondent's failure was a Major Extent Violation since one occupant of the residential dwelling was a child under the age of 6, and she should have proposed a civil penalty of $10,320.00 . (Tr. 182). Upon Respondent's testimony at hearing, it became clear the lessee was C. Garrison who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96; Tr. 244, 245, 191, 204, 211).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor's statement disclosing either the presence

of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, in violation of 40 C.F.R. § 745.113(b)(2), and as alleged in Count 9 of the Complaint. (CX 7, 95-102; Tr. 180-181).

The Penalty Policy designates this failure a Circumstance Level 3 Violation (CX 8, 165), meaning it has a medium impact of impairing the ability to assess the information (CX 8 at p. bates-stamped 148). The lessor's disclosure statement is intended to provide a description of what the landlord knows about the historical presence of lead-based paint and/or lead-based paint hazards in the property. 40 C.F.R. § 745.113(b)(2).

Ms. Grace testified Respondent's failure was a Circumstance Level 3 Violation, and a Significant Extent Violation since one occupant of the residential dwelling appeared to be between the ages of 7 and 18, and proposed a civil penalty of $5,160.00. (Tr. 182). However, she further testified Respondent's failure was a Major Extent Violation since one occupant of the residential dwelling was a child under the age of 6, and she should have proposed a civil penalty of $7,740.00 . (Tr. 182). Upon Respondent's testimony at hearing, it became clear the lessee was C. Garrison who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96; Tr. 244, 245, 191, 204, 211).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, 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 were provided to lessee, or failed to indicate such records or reports were unavailable, in violation of 40 C.F.R. § 745.113(b)(3), and as alleged in Count 15 of the Complaint. (CX 7, 95-102; Tr. 180-181).

The Penalty Policy designates this failure a Circumstance Level 5 Violation (CX 8, 166), meaning it has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148).

Ms. Grace testified Respondent's failure was a Circumstance Level 5 Violation, and a Significant Extent Violation since one occupant of the residential dwelling appeared to be between the ages of 7 and 18, and proposed a civil penalty of $1,680.00. (Tr. 182). However, she further testified Respondent's failure was a Major Extent Violation since one occupant of the residential dwelling was a child under the age of 6, and she should have proposed a civil penalty of $2,580.00 . (Tr. 182). Upon Respondent's testimony at hearing, it became clear the lessee was C. Garrison who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96; Tr. 244, 245, 191, 204, 211).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, a statement by the lessee affirming receipt of the lessor's disclosure statement, 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, and the Lead Hazard Information Pamphlet pursuant to 40 C.F.R. § 745.113(b)(4), in violation of 40 C.F.R. § 745.113(b)(4), and as alleged in Count 21 of the Complaint. (CX 7, 95-102; Tr. 180-181).

The Penalty Policy designates this failure as a Circumstance Level 4 Violation (CX 8, 166), meaning it has a medium impact on the ability to assess the information. (CX 8, 148). The lessee's affirmation of receipt is intended to acknowledge that the prospective tenant has received certain required information before entering into the lease. 40 C. F. R. § 745.113(b)(6).

Ms. Grace testified Respondent's failure was a Circumstance Level 4 Violation, and a Significant Extent Violation since one occupant of the residential dwelling appeared to be between the ages of 7 and 18, and proposed a civil penalty of $3,220.00. (Tr. 182). However, she further testified Respondent's failure was a Major Extent Violation since one occupant of the residential dwelling was a child under the age of 6, and she should have proposed a civil penalty of $5,160.00 . (Tr. 182). Upon Respondent's testimony at hearing, it became clear the lessee was C. Garrison who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96; Tr. 244, 245, 191, 204, 211).

Respondent's lease, and the testimony of Ms. Grace, demonstrated the lease failed to include, as an attachment or within the lease, the lessor and lessee signatures certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, in violation of 40 C.F.R. § 745.113(b)(6), as alleged in Count 28 of the Complaint. (CX 7, 95-102; Tr. 180-181).

The Penalty Policy designates this failure a Circumstance Level 6 Violation (CX 8, 167), meaning that each of these violations has a low impact on the ability to assess the information required to be disclosed. (CX 8, 148). The requirement that the signatures, along with the dates of each signature, be included as part of the contract is intended to serve to ensure that each party has certified the truth and accuracy of their statements concerning the transaction. 40 C.F.R. § 745.113(b)(6).

Ms. Grace testified Respondent's failure was a Circumstance Level 6 Violation, and a Significant Extent Violation since one occupant of the residential dwelling appeared to be between the ages of 7 and 18, and proposed a civil penalty of $640.00. (Tr. 182). However, she

further testified Respondent's failure was a Major Extent Violation since one occupant of the residential dwelling was a child under under the age of 6, and she should have proposed a civil penalty of $1,290.00 . (Tr. 182). Upon Respondent's testimony at hearing, it became clear the lessee was C. Garrison who used the residential dwelling as "Joyful Beginnings," a child daycare center. (CX 7, 102, 96; Tr. 244, 245, 191, 204, 211).

D. The Adjusted Proposed Civil Penalty of $58,060.00

Complainant had, and Ms. Grace testified, no information to adjust the calculated civil penalty of $58,060.00 (Tr. 182-183).

Respondent Ability to Pay or Continue in Business

The Relevant Case Law

TSCA requires that EPA consider a violator's ability to pay when determining the amount of a civil penalty. 15 U.S.C. § 2615(a)(2)(B). 40 C.F.R. § 22.24 places the burden of proof of the proposed penalty's appropriateness on the Agency stating that "[t]he complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate." In the *case In Re New Waterbury, Ltd.,* 5 E.A.D. 529 (EAB 1994), the EAB held that when determining the amount of a civil penalty, EPA's burden is only to demonstrate that the Agency considered all of the required statutory penalty factors as part of its prima facie case. The burden then shifts to the Respondent to rebut EPA's demonstration by proving that the proposed civil penalty was not appropriate either because the Agency failed to consider a statutory factor or because the evidence did not support the proposed calculation. Finally, the Agency must address Respondent's rebuttal evidence, if any, with additional evidence or, if Respondent has only made assertions that the penalty was not

appropriate, cross-examination discrediting such assertions. *See, New Waterbury*, 5 E.A.D. at 536 - 543.

More specifically, the EAB established in New Waterbury that the Complainant has the initial burden of proving that the penalty is appropriate and that this burden encompasses consideration of each statutory penalty factor, although there is no specific burden with regard to any individual factor. *New Waterbury*, 5 E.A.D. at 539. Where "ability to pay" is a statutory penalty factor, the Board held that Complainant's case-in-chief must include consideration of this factor. *Id.* at 537-38. However, as recognized in that case and in subsequent decisions, "although the Region bears the burden of proof as to the appropriateness of the penalty it does not bear a separate burden on each of the [statutory penalty] factors." *Id.* at 538; *see also, In re CDT Landfill Corp.*, 11 E.A.D. 88, 120 -121, 2003 EPA App. LEXIS 5 (EAB 2003); and In *re Carroll Oil Co.*, 10 E.A.D. 635, 662 (EAB 2002). Rather, the burden of proof goes to the appropriateness of the penalty taking all factors into account, and "the depth of consideration will vary in each case, but so long as each factor is touched upon and the penalty is supported by the analysis a prima facie case can be made." *Id.* at 538. See also, *CDT Landfill Corp.*, 11 E.A.D. at 121.

In addition, the Board subsequently held that until the issue of ability to pay has been properly raised by a respondent, a violator's ability to pay may be presumed, due to the limitations on EPA's ability to gather the requisite financial information to assess the subject statutory penalty factor:

> With regard to the ability-to-pay penalty factor, we have held that "'a respondent's ability to pay may be presumed until it is put at issue by a respondent,'" because the Agency's ability to gather the necessary financial information about a respondent is limited and the respondent is in the best position to obtain the relevant financial

records about its own financial condition.

CDT Landfill Corp., 11 E.A.D. at 122 (citing In *Re Spitzer Great Lakes, Ltd.* 9 E.A.D. 302, 321 (EAB 2000) [quoting *New Waterbury*, 5 E.A.D. at 541 and *In Re Kay Dee Veterinary Division of Kay Dee Feed Company*, FIFRA Appeal No. 86 (CJO, Oct. 27, 1988), 2 E.A.D. 646, 652 n. 15 (referring to the 'customary evidentiary rule that the party to an adjudicatory proceeding who is in possession of the facts has the responsibility to produce them.')])

Thus, where a respondent has properly raised the issue of ability to pay, Complainant, in order to meet its burden, must prove as part of its prima facie case only that the Agency has *considered* the respondent's ability to pay. To prove that the Agency "considered" this factor, Complainant must introduce into the record at hearing some general financial evidence from which it can be inferred that the respondent has the ability to pay the proposed penalty. As the Board explained:

> In our view, a Region, at a penalty *hearing*, must as part of its prima facie case produce some evidence regarding the respondent's general financial status from which it can be inferred that the respondent's ability to pay should not affect the penalty amount. See Helena Chemical Co. (record contains evidence that respondent's gross sales exceeded $ 300 million, thus supporting conclusion that respondent had ability to pay $ 117,400 penalty). Thus, if this part of the Region's prima facie case is not rebutted, there will be evidence in the record to show that the Agency *considered* a respondent's ability to pay in assessing the penalty.

New Waterbury, 5 E.A.D. at 541-42 (emphasis in original). The Board clarified later in its decision that the "evidence regarding the respondent's general financial status" would consist of evidence of "sales volume" or "apparent solvency":

> Where ability to pay is at issue going into a hearing, the Region will need to present some evidence to show that it considered the respondent's ability to pay a penalty. The Region need not present any specific evidence to show that the respondent can pay or obtain funds to pay the assessed penalty, but can simply rely on some general financial information regarding the respondent's financial status which can support the inference

that the penalty assessment need not be reduced. Once the respondent has presented specific evidence to show that despite its sales volume or apparent solvency it cannot pay any penalty, the Region as part of its burden of proof in demonstrating the "appropriateness" of the penalty must respond either with the introduction of additional evidence to rebut the respondent's claim or through cross examination it must discredit the respondent's contentions.

Id. at 542-43 (citing *Kay Dee Veterinary Division*, FIFRA Appeal No. 86-1, at 10-11).

The Board also held that when a respondent fails to raise the issue of ability to pay in its Answer to the Complaint or as part of its Prehearing Exchange a presiding officer may consider any objection to the proposed civil penalty based upon ability to pay under the Consolidated Rules to have been waived. [3] *Id.* at 542. Additionally, the EAB held that the Agency must be given access to a respondent's financial records before the start of a hearing should a respondent intend to raise ability to pay as an issue at hearing. *Id.* at 542.

Additional decisions by EPA's Administrative Law Judges (ALJs) have noted that Complainant's initial burden of production with regard to ability to pay is a minimal one. As the Court explained *In the Matter of Thomas Waterer and Waterkist Corp., d/b/a Nautilus Foods,* Docket No. CWA-10-2003-0007, 2004 EPA ALJ LEXIS 2 (January 28, 2004), at 35, "[t]his initial burden is minimal, as EPA need only present some general financial information." *In the Matter of Community Management, Inc. and LHI, Inc.,* Dkt. No. CWA 03-2001-0407, 2003 EPA ALJ LEXIS 2 (January 15, 2003), the Court explained the shifting burden of production with respect to the ability to pay issue as follows:

> [I]n the realm of demonstrating a respondent's 'ability to pay' a proposed penalty, EPA has a minimal burden of production. As the Environmental Appeals Board has noted, in order for EPA to carry its burden regarding ability to pay, it need not present any specific

[3] This Court made just such a ruling in this matter on July 27, 2012, when it issued its *Order on Motions to Supplement Prehearing Exchange and on Complaint's Motion to strike*, granting Complainant's motion to strike Respondent's untimely assertion of its inability to pay the proposed civil penalty in this proceeding. The Court's order was based upon the fact that of her inability to pay she may have had to the proposed civil penalty.

> evidence, but rather may rely on some general financial information. See, e.g., In re: Chempace Corporation[,] 2000 WL 696821. (EPA EAB May 18, 2000). If there is no information available for the agency to demonstrate an ability to pay the proposed penalty, it is presumed a respondent can pay the amount sought and the burden shifts to the respondent to demonstrate its inability.

LHI, Inc. at 5-6.

In *New Waterbury,* the EAB explained that, after the Complainant produced "general financial information" in support of its *prima facie* case on the ability to pay issue, the burden then shifts to the Respondent to produce "*specific* evidence to show that despite its sales volume or apparent solvency it cannot pay any penalty." *See New Waterbury*, 5 E.A.D. at 543. The Board clarified in a later decision, In re Chempace Corp., 9 E.A.D. 119 (EAB 2000), that the respondent's burden in this regard is to show that it is unable to pay *any* penalty at all: "[a]s we stated in *New Waterbury*, the respondent must show an inability to pay '*any* penalty' to fully meet its burden of production in response to the complainant's *prima facie case*." 9 E.A.D. at 137 (emphasis in original).

Finally, if the respondent meets its burden by producing specific evidence of an inability to pay any penalty, Complainant, "as part of its burden of proof in demonstrating the 'appropriateness' of the penalty[,] must respond either with the introduction of additional evidence to rebut the respondent's claim, or through cross examination it must discredit the respondent's contentions." *New Waterbury*, 5 E.A.D. at 543 (citing *Kay Dee Veterinary Division* at 10-11); see also *Spitzer Great Lakes*, Ltd. 9 E.A.D. at 319-21; and *In re Chempace Corp.*, 9 E.A.D. at 132-33.

Summary of the Facts Introduced Into Evidence by the Parties
Concerning Respondent's Ability to Pay

At the August 7, 2012 hearing in this action, Respondent, as discussed more fully below, did not introduce any relevant or probative evidence at the hearing demonstrating either her general insolvency or that Complainant had not properly considered the issue of ability to pay in this matter. Complainant, on the other hand, introduced relevant and probative evidence demonstrating Respondent's general solvency and that Complainant had considered all of the required statutory civil penalty factors, including ability to pay.

A. Complainant's Evidence

Complainant introduced into evidence the testimony of Maureen O'Neill, an EPA civil investigator with extensive experience in financial investigations and analyses. (Tr. 116 – 146). Complainant also introduced Ms. O'Neill's July 1, 2012 *Investigative Report of Dessie Brumfield and Brumfield Properties,* LLC which detailed her analysis of the financial condition of Ms. Brumfield and Brumfield Properties, LLC, a limited liability company owned and controlled by Ms. Brumfield.[4] *See* (CX 11). Complainant also relies upon numerous factual statements made by Respondent at the hearing. (Tr. 213 – 215, 223 – 226 and 248 – 250).

Ms. O'Neill testified to the financial condition of Ms Brumfield and Brumfield Properties, LLC based upon her review of numerous public records, all of which were attached to her report and introduced into evidence. (Tr.141). A majority of these records are copies of property records gathered by Ms. O'Neill from the County of Milwaukee and the City of Milwaukee Tax Assessor's office, which revealed that Respondent owns, either individually or

[4] A Limited Liability Company (LLC), although a business entity, is a type of unincorporated association and is not a corporation. The primary characteristics an LLC shares with a corporation is limited liability, and the primary characteristics it share with a partnership is the availability of pass-through income taxation. Wikipedia, 2012.

with other persons, at least thirteen properties with an estimated fair market value of approximately $700,000. (CX 11, 191 and Tr. 134 – 135).

Complainant also introduced Ms. O'Neill's testimony and documentary evidence concerning the financial status of Brumfield Properties, LLC. The testimony of Ms. O'Neill and the records she obtained from Lexis-Nexis and the Wisconsin Secretary of State's Office reveal that Ms. Brumfield, via Brumfield Properties, LLC, receives estimated rental payments of approximately $240,000 per year. [5] They also show that Brumfield Properties, LLC is in good standing and has no liabilities other than tax and mortgage payments for some or all of the properties listed in the Ms. O'Neill's report.[6] (CX 11, 193, 201, 203 and 359 – 365 and Tr. 135). Ms. O'Neill's report also demonstrated that Ms. Brumfield is the registered agent, chief executive officer and sole corporate officer for Brumfield Properties, LLC. (CX 11 at Attachment 6, 359 – 365).

With regard to the free-market value of Ms. Brumfield's properties, Ms. O'Neill's analysis was based upon a review of public records, nevertheless, she was able to determine the assessed value of Respondent's properties within the City of Milwaukee, which, as she testified, is quite accurate due to the manner in which the City of Milwaukee assesses properties. She testified that the assessed value of her properties should be within 10% of what the City believes the property could actually sell for, (Tr. 144-145), although Ms. O'Neill conceded that the

[5] This figure is based upon annual sales data for Brumfield Properties, LLC as set forth in the October 29, 2011 Dun & Bradstreet, Inc. report for Brumfield Properties, LLC which may be found at Attachment 6 to CX 11. (CX 11, 365). Complainant concedes that this figure does not necessarily represent the annual earnings or income available to Ms. Brumfield given the mortgage liabilities for some or all of the subject properties and the annual operating expenses that are typically incurred by a rental property business, financial information which was requested but not provided by the Respondent to Complainant. (CX 11, 193).

[6] While Ms. Brumfield stated that all three of her children are living at her house, here residence is not one of the rental properties at issue in this matter nor is it one of the properties listed in the Complaint. (Tr. 248-250).

assessments by the City of Milwaukee for the year prior to the one upon which she based her analysis were higher, a fact she attributed to the present state of the economy. (Tr. 148-149).

Lastly, with regard to whether any of Respondent's properties had a higher loan balance than the free-market value of those properties, a situation which could, in theory, prevent Respondent from liquidating some or all of her real estate assets in order to pay a proposed civil penalty, Ms. O'Neill testified that she had no information with regard to whether any of the loans held by Respondent were "under water." (Tr. 146-147). When asked by Ms. Brumfield why she had not considered such information as part of her analysis, Ms. O'Neill testified that she had been unable to do so because this is information available only to the Respondent and Ms. Brumfield had not provided any such information to the Agency, despite repeated requests to do so. (Tr. 146-147). All of these facts were admitted into evidence by the Court.

In sum, Complainant introduced the testimony showing that the Agency had reviewed and analyzed all available public records of Ms. Brumfield and Brumfield Properties, LLC and determined that Respondent has significant assets and income with which to pay the proposed civil penalty. (CX 11, 191 – 203 and Tr. 116 – 146). Via Ms. O'Neill's testimony and report, Complainant introduced evidence that Respondent owns, either individually or with other persons, numerous parcels of property within the City of Milwaukee, Wisconsin and that Brumfield Properties, LLC has significant yearly company sales/earnings. Lastly, Complainant introduced Ms. O'Neill's testimony and report in which she concluded that Ms. Brumfield has the ability to pay the $58,060 proposed civil penalty. (CX 11, 193 and 203 and Tr. 135).

B. Respondent's Evidence

In response to Complainant's ability to pay demonstration, Respondent provided no financial documentation at hearing on her behalf. Nor did Ms. Brumfield rebut any of the testimony of Ms. O'Neill or challenge, in any meaningful way, any of the information presented or conclusions set forth in Ms. O'Neill's July 1, 2012 Report. In fact, the only evidence proffered by Respondent regarding her financial status were several non-specific oral assertions by Ms. Brumfield that she allegedly could not pay the proposed civil penalty due to her difficult financial circumstances. While Ms. Brumfield made several statements during the hearing that she was unable to pay the proposed civil penalty because she is under financial duress, e.g. she was "broke," "barely holding on," "struggling," "underwater on her mortgages" and, with regard to five of her properties, owes "more than they're worth," she never provided any specific facts or documents to support any of these assertions. (Tr. 206, 209 and 250).

With regard to her income, Ms. Brumfield admitted, in response to questions from the Court, that only one of the rental properties she owns was not currently being rented by a tenant and that she was receiving rental payments from the tenants, family members or otherwise, of all of her other rental properties. [7] (Tr. 248 – 250). Ms. Brumfield also testified during cross-examination that she receives retirement income from both the United States and the County of Milwaukee, i.e. Social Security benefit and Milwaukee County pension payments, both of which are deposited into a bank account registered under Brumfield Properties, LLC. (Tr. 223 – 226).

[7] Ms. Brumfield's assertion that Ms. O'Neill's report was not accurate because she no longer owned one of the two vehicles listed in Ms. O'Neill's report was rebutted by Ms. O'Neill when Ms. O'Neill explained that Ms. Brumfield's vehicle registration data may not have been updated by the State of Wisconsin at the time she accessed the State's vehicle registration database. (Tr. 156)

Ms. Brumfield also testified during cross-examination about her regular visits to a local casino, discretionary spending which occurs despite her "financial distress." (Tr. 224).

In addition, during cross-examination, Ms. Brumfield admitted to being the registered agent, the sole principal and founder of Brumfield Properties, LLC; the primary manager, operator and accountant of this limited liability company; and to being fully in control of the day-to- day operations of the company's operations. (Tr. 213 – 215). Ms. Brumfield also admitted to owning one property held in the name of Brumfield Properties, LLC. (Tr. 213).

Other than the assertions described above, Respondent did not provided the Court any evidence to counter the evidence produced by Complainant demonstrating that Ms. Brumfield has the ability to pay the proposed civil penalty. Nor did Ms. Brumfield provided any credible explanation as to why she refused to provide copies of any of the financial documentation requested by EPA, which may have provided a more complete picture of her financial situation, other than to say at hearing that she was afraid to provide such financial information to the government because she thought the federal government was involved in a "scam" or conspiracy to ruin her and that she had not treated fairly during the proceedings. (Tr. 211 – 213).

In sum, Complainant, via Ms. O'Neill's testimony and report and Ms. Brumfield's testimony, provided the uncontroverted evidence of Respondent's ownership of valuable assets and receipt of significant rental payments and retirement income, supporting the inference that Ms. Brumfield has the ability to pay the proposed civil penalty. Respondent did not similarly provided the court with any specific evidence that she cannot pay the proposed civil penalty.

Complainant Met its Initial Burden of Proof

As explained below, Complainant has met its initial burden of proof with regard to ability to pay, as defined by *New Waterbury*, et al., to consider the statutory penalty factor of ability to pay by producing credible evidence demonstrating that Respondent is the owner of numerous real property assets and that the Respondent, either directly or through her closely held property rental company, Brumfield Properties, LLC, is the recipient of significant rental payments. Complainant produced credible testimony and a detailed financial analysis from a highly qualified civil investigator who researched all available public records to determine a reasonable estimate of Ms. Brumfield's financial worth. These records documenting Respondent'ss ownership of valuable real estate and the potential for significant rental income, are more than sufficient to meet Complainant's initial burden of proof with respect to the ability to pay issue.

Evidence of real estate ownership should lead to an inference that the owner of such land has an ability to pay. See *In the Matter of Ray and Jeanette Veldhuis*, Docket No. CWA-9-99-0008, 2002 EPA ALJ LEXIS 1, 314-315 (June 24, 2002), in which the Court recognized that documentary evidence indicating that a respondent owns valuable real estate is sufficient to support the inference that the respondent can afford to pay a penalty. *See* also In *the Matter of Billy Yee,* Docket No. TSCA-7-99-0009, 2000 EPA ALJ LEXIS 511 (June 6, 2000) (in discussion of ability to pay issue, the Chief ALJ cited to complainant's production of tax assessor reports and information on value of property owned by respondent, as well as rental income). By introducing CX 11 and Ms. O'Neill's testimony into the record, Complainant has proved its prima facie case that it considered the penalty factor of ability to pay.

In addition, since Respondent has not provided the Court with copies of any tax returns or financial statements for herself or Brumfield Properties, LLC, the specific amount of income she earns annually via the rental of her numerous properties, while potentially significant, is unknown. Thus, critical information bearing on the issue of Respondent's ability to pay is absent from the record, and this information was and is solely within Respondent's possession and control. Accordingly, the absence of specific information on the amount of such income should not inure to the benefit of Respondent. See *Carroll Oil Company*, 10 E.A.D. at 665, 668 ("the fact that Carroll Oil has frustrated efforts to develop a more comprehensive understanding of its financial situation, instead salting the record selectively, leaves us less than confident that Carroll Oil has painted an accurate or complete picture").

In sum, Ms. O'Neill's report and testimony and the additional testimony of Ms. Brumfield provided the uncontroverted evidence that Respondent owns valuable real estate and receives a significant amount of income. This evidence is more than sufficient to support the inference that the penalty proposed in the Complaint should not be reduced for considerations of ability to pay. Thus, Complainant has satisfied its prima facie burden on the issue of ability to pay.

Respondent's Answer Admitted She is Able to Pay the Proposed Civil Penalty and the Court Barred From This Action Respondent's Untimely Claim that She is Unable to Pay the Proposed Civil Penalty

With regard to Respondent's burden of proof, the issue is moot because Respondent admitted in her Answer that she is able to pay the proposed civil penalty and Respondent was barred by the Court, per the Court's July 27, 2012 *Order on Motions to Supplement Prehearing Exchange and on Complainant's Motion to Strike*, from asserting her inability to pay the

proposed civil penalty in these proceedings. While the issue has apparently been decided, the history of her non-timely assertion is instructive.

On December 14, 2009, prior to the filing of the Complaint in this case, Complainant sent a Pre-filing Notice letter (PFNL) letter to Respondent, requesting, *inter alia*, information relevant to Respondent's ability to pay. *See* (CX 10). The letter provided the Respondent an "opportunity to present any information" that Respondent believed EPA should consider prior to the filing of the subject action, including any "financial information" bearing on Respondent's ability to pay the proposed civil penalty. Respondent did not reply to the PFNL nor did Ms. Brumfield take this opportunity to provide EPA with any relevant information concerning her or Brumfield Properties, LLC's financial circumstances.

On July 8, 2010, Complainant filed and issued to Respondent the Complaint in this case which notified Respondent of the alleged violations; the proposed civil penalty for such violations; the specific manner in which the penalty was calculated; and which offered Ms. Brumfield the opportunity to informally meet to discuss the facts of the proceeding. Paragraphs 164 – 166 of the Complaint alleged that Respondent was properly notified, via the December 14, 2009 PFNL, of her rights and obligations with regard to any assertion of ability to pay the proposed civil penalty; that publically available information showed that Respondent had the ability to pay the proposed civil penalty; and that Respondent had not claimed that she was unable to pay the proposed civil penalty. Respondent subsequently made no effort to discuss the matter with the Complainant prior to filing her Answer.

On September 29, 2011, Respondent filed her Answer to the Complaint. Respondent neither admitted, denied or explained the factual allegations set forth in paragraphs 164 – 166 of

the Complaint, thereby admitting those allegations per 40 C.F.R. § 22.15(d). In addition, Respondent failed to provide the Court with the basis for opposing any proposed relief contrary to 40 C.F.R. 22.15(b) and did not raise in her Answer the issue of her inability to pay the proposed civil penalty, other than to state "I am at least keeping my property up, attempting to get responsible tenant (sic), pay my taxes and struggle to pay my mortgage." Nor did she provide the Complainant or the Court with any financial information or documentation related to her ability to pay the proposed civil penalty. *See* Respondent's Answer (September 29, 2012), Pg. 3.

On November 18, 2011, the Court issued a Prehearing Order, which among other things, directed Respondent, if she intended to argue that the proposed penalty should be reduced or eliminated for any reason, such as an inability to pay the proposed civil penalty, to include in her Prehearing Exchange a statement "explaining why the penalty should be reduced or eliminated. The statement should be accompanied by a copy of any and all documents supporting Ms. Brumfield's argument." *See* Prehearing Order (November 18, 2011) Pg. 3. Para. 3(c) and 40 C.F.R. 22.19(a)(3).

On December 28, 2011, Complainant filed its Prehearing Exchange which included financial information concerning Brumfield Properties, LLC intended to demonstrate that the subject corporation was active, in good standing and controlled by Ms. Brumfield. *See* Complainant's Prehearing Exchange, dated December 28, 2011.

On January 26, 2012, the Court issued its *Order to Show Cause* directing Respondent to file her Prehearing Exchange, which was due on or before January 20, 2012, on or before

February 10, 2012, explaining why she had not filed her Prehearing Exchange and why she should not be found in default.

On March 5, 2012, counsel for Respondent filed Ms. Brumfield's response to the Court's Order to Show Cause, with an attached two page Prehearing Exchange, and did not assert that Ms. Brumfield was unable to pay the proposed civil penalty, rather counsel for Respondent merely stated that "the penalties requested are grossly excessive for her omissions." *See* Respondent's Prehearing Exchange (March 5, 2012), Pg. 1. The Court issued its *Order on Showing* of Good Cause on March 6, 2012.

On two occasions, April 12 and May 18, 2012, Complainant provided to counsel for Respondent financial data request forms intended to encourage and simplify the production of relevant financial information to EPA by the Respondent. The purpose of these forms was to gather probative private financial information that was only available from the Respondent. Respondent never completed these forms nor did she provide any of the requested financial information to the Complainant.

On July 11, 2012, Complainant filed its Motion to *Supplement its Pre-hearing Exchange*, attaching a July 1, 2012 Investigative Report containing financial information on Ms. Brumfield and Brumfield Properties, LLC.

On July 20, 2012, approximately two weeks before the hearing in this matter, Respondent filed Respondent's *Motion to Supplement Prehearing Exchange*, attaching two bank statements for Brumfield Properties, LLC and copies of associated bank transaction receipts. In this motion, Respondent asserted for the first time that she was "unable to pay the civil penalties sought by

Complainant." See Respondent's Motion to Supplement Prehearing Exchange (July 20, 2012), Pg. 1, Para. 4.

On July 27, 2012, the Court issued its Order on Motions to *Supplement Prehearing Exchange* and on Complainant's *Motion to Strike*, which granted Complainant's request to strike Respondent's claim of inability to pay the proposed civil penalty holding that Respondent had ample notice to assert her inability to pay claim and had not done so.

On August 7, 2012, a hearing was held in Milwaukee, Wisconsin. During the hearing, Respondent made numerous statements concerning her inability to pay the proposed civil penalty in this case.

Accordingly, the issue of whether Respondent has met her ability to pay burden, which Complainant argues she has not, appears to be moot, as Respondent admitted in her Answer that she is able to pay the proposed civil penalty and she was barred from raising her inability to pay the proposed civil penalty at the hearing in this case by the Court.

Respondent Failed to Meet Her Burden of Proof

Even if the issue of whether Respondent has the ability to pay the proposed civil penalty is not moot, Respondent nevertheless continued her failure to meet the EAB's ability to pay evidentiary standard at the August 7, 2012 hearing by not producing any specific probative evidence to support her inability to pay claim. Therefore, should Respondent's ability to pay be a factor considered by the Court, the record clearly reflects that Respondent has not satisfied her ability to pay burden in this regard. As demonstrated below, Respondent failed to provide the Court with sufficient facts in these proceedings to prove that she cannot pay the proposed civil penalty.

During the subject hearing, Respondent introduced into evidence limited facts intended to demonstrate her inability to pay the proposed civil penalty. While Complainant did not object to this testimony, Respondent, nevertheless, did not satisfy her burden of proof. Once Complainant had satisfied its burden to consider Respondent's ability to pay in this proceeding, the burden then shifted to Ms. Brumfield to provide specific facts to the Court demonstrating that she was unable pay the proposed civil penalty. She clearly did not do so.

The ability to pay evidence proffered by Respondent at hearing, consisted only of oral assertions by Ms. Brumfield of her financial duress. This testimony was incomplete, inconclusive, contradictory and largely self-serving, and thus failed to rebut the evidence produced by Complainant in its case-in-chief. Because Respondent did not introduce any relevant or probative evidence or documents demonstrating either her general insolvency or that Complainant had not properly considered the issue of ability to pay in this matter, she has not met her burden with regard to her ability to pay the proposed civil penalty.

Respondent failed to rebut Complainant's prima facie case on ability to pay because Ms. Brumfield did not rebut any of Ms. O'Neill's testimony or dispute any of the information or records in her report, other than to note that one item of information regarding Respondent's personal property was not up to date. (Tr.146). Nor did Respondent challenge Ms. O'Neill's credentials, experience or expertise or dispute any of Ms. O'Neill's analyses or conclusions concerning Ms. Brumfield's financial condition, other than question why Ms. O'Neill did not take into account Respondent's mortgage liabilities as part of her analysis. (Tr. 117 -- 118 and 146 – 147). In response to that specific point, Ms. O'Neill answered that there was no way for her to take such information into account because it was information in the complete control of

Respondent and that Ms. Brumfield had not provided EPA with that information. (Tr. 146 – 147).

In addition, Ms. Brumfield's assertions of her inability to pay the proposed civil penalty were discredited during her cross-examination. As described above, Ms. Brumfield contradicted numerous prior statements made either in her Answer or during her direct testimony at the hearing, calling into question her credibility. Ms. Brumfield also made several admissions during her cross-examination concerning her sources of income, her discretionary spending and her control and operation of Brumfield Properties, LLC which appear to contradict her assertions of financial distress. Thus, the evidence provided by the Respondent was not sufficient to meet her burden and her assertions were discredited.

Rather, to meet her burden, Ms. Brumfield was required to produce "*specific* evidence" to the Court proving that she could not pay any penalty in this case. See *New Waterbury Ltd.*, 5 E.A.D. at 543. As she admitted to the Court, she chose not to do this for various reasons, and while it was her right not to do so, nevertheless, her failure to do so bars her from now arguing she is unable to pay the proposed civil penalty.

ALJs have noted in other decisions that Complainant may discredit a respondent's financial information by demonstrating through the testimony of a financial witness that crucial information in the respondent's control is absent from the records. See *Waterer and Waterkist Corp.* 2004 EPA ALJ LEXIS 2 at 35-36 (where the Court explained that, for Complainant to address Respondent's financial information, "EPA can discredit such information" through, inter alia, the testimony of its own witness). While Complainant's witness, Ms. O'Neill was not offered as an expert witness, she testified that she had conducted approximately 85 financial

investigations on behalf of EPA; she had worked as a civil investigator for approximately fourteen years, (Tr. 117 – 119), and she was very familiar with the standard methods used to gather and review financial records. She also testified that additional financial information that would have helped to refine her analysis had been withheld from the Agency by Ms. Brumfield, thereby discrediting Ms. Brumfield's testimony with regard to ability to pay. (Tr. 123 – 125, 143-144 and 147).

The Board has also noted that the testimony of one affiliated with the respondent is inherently self-serving, and therefore entitled to little weight. *See In re: Bil-Dry Corporation*, 9 E.A.D. 575, 613-614 (EAB 2001). The same logic applies to a respondent who testifies on her own behalf, whether as a corporate officer or otherwise. Such testimony is inherently self-serving, and is therefore entitled to little weight. *See Central Paint and Body Shop, Inc.*, 2 E.A.d. 309, 315 (CJO 1987). It is noteworthy that Respondent failed to call any witness on her behalf to support the accuracy of her statements as to the magnitude of her liabilities (whether she is underwater with regard the her mortgages); the limited value and liquidity of her real estate holdings (whether they have dropped in value or could be sold in today's market); or the financial operations of Brumfield Properties, LLC (whether she receives a salary or rental income from her closely held corporation). Instead, Ms. Brumfield only provided her own self-serving testimony without providing any records to support her contentions. This is the type of testimony which has been deemed inherently unreliable by the Board and insufficient to demonstrate inability to pay a penalty. See *In re F & K Plating Co.*, 2 E.A.D. 443, 499 (CJO 1987) ("[U]nsupported self serving testimony is generally entitled to little weight").

Also, Respondent's failure to produce any financial information, e.g. income tax returns, mortgage records, financial statements, etc. for herself or Brumfield Properties, LLC, should lead to an adverse inference by the Court that the information contained in these documents would have contradicted Respondent's claimed inability to pay a significant penalty. 40 C.F.R. § 22.19(g) states in part:

> Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion: (1) infer that the information would be adverse to the party failing to produce it...

This requirement is presumably based upon the "adverse inference" rule which has been explained in great detail by the D.C. Circuit Court of Appeals: "Simply stated, the [adverse inference] rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *International Union (UAW) v. N.L.R.B.,* 459 F.2d 1329, at 1336 (D.C. Cir. 1972).

Federal courts have recognized that, "based on considerations of fairness, [evidentiary law] does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary." *U.S. v. New York, New Haven & Hartford R.R.,* 355 U.S. 253, at 256 n.5 (1957). "Ordinarily a litigant does not have the burden of establishing facts peculiarly within the knowledge of the opposing party." *Browzin v. Catholic University of America,* 527 F. 2d 843, at 849 (D.C. Cir. 1975). In upholding a regulation of the Secretary of the Interior requiring a mine owner to come forward with information regarding his mine when challenging an "imminent danger" order, issued under the Federal Coal Mine Health and Safety Act of 1969, the Seventh Circuit Court of Appeals noted that "[a]s respondents logically say, it is, after all, his mine and he had the best knowledge of its condition." *Old Ben Coal Corporation v. Interior*

Board of Mine Operation Appeals, 523 F. 2d 25, at 36 (7th Cir. 1975). Citing 9 Wigmore, Evidence § 2486 (3d ed.), the Court further noted that "[t]his is a consideration which has often been advanced as a special test for solving a limited class of cases, i.e., the burden of proving a fact is on the party who presumably has peculiar means of knowledge enabling him to prove its falsity, if it is false." *Id.* In the instant case, the consequences of Respondent's failure to produce such critical financial information must fall on Ms. Brumfield, and must result in a finding that Respondent failed to sustain her burden of production (following Complainant's case-in-chief on the ability to pay issue). *Carroll Oil Co.,* 10 E.A.D. at 665, 668. Accordingly, due to Ms. Brumfield's continued failure to produce any financial documentation to support her inability to pay claim, this Court may infer under the Consolidated Rules that she did not produce such information because it would not have supported her argument.

While Complainant does not wish to trivialize any legal problems or other diffculties Ms. Brumfield or her family may be experiencing during these difficult economic times, as demonstrated above, Respondent's unsupported assertions of financial duress are unreliable indicators of her true ability to pay and Ms. Brumfield's failure to produce any specific evidence at hearing to support her inability to pay claim should result in an adverse finding by the Court.

In sum, because Complainant: 1) met its burden of proof with regard to Respondent's ability to pay the proposed civil penalty, by introducing relevant and probative evidence demonstrating Respondent's general solvency and that Complainant had considered all of the required statutory civil penalty factors, including ability to pay; 2) because Ms. Brumfield failed to provide the Court with any reliable evidence, specific or otherwise, demonstrating she cannot pay the proposed civil penalty; 3) because EPA's cross-examination of Ms. Brumfield

discredited her inability to pay assertions; 4) because Respondent admitted to being able to pay the proposed civil penalty in her Answer; 5) because Respondent was barred by the Court from asserting inability to pay in these proceedings; and 6) because Respondent has not met her burden of proof demonstrating that she cannot pay the proposed civil penalty, this Court should hold that Respondent has the ability to pay the proposed civil penalty in this case.

Therefore, Complainant did not employ this factor to adjust the calculated proposed civil penalty.

History of Prior Such Violations

When a violator has a history of having previously violated the Lead Disclosure Rule, the gravity-based penalty should be adjusted upward by as much as 25%. (CX 8, 154). The TSCA Guidelines provide for an upward adjustment of 25% for a first repetition, and 50% for a second repetition of the violation that does not appear in the Penalty Policy.

Complainant found no such history for Respondent. Therefore, Complainant did not employ this factor to adjust the calculated proposed civil penalty.

Degree of Culpability

The TSCA Guidelines and the Penalty Policy provide two criteria for assessing culpability, namely the violator's knowledge and the violator's control over the violative condition. When a violator commits an act which he knew would be a violation of the Lead Disclosure Rule or a violation where the violator has previously received a Notice of Noncompliance (NON) for Section 1018 violations, the gravity-based penalty should be adjusted upward by as much as 25% . (CX 8, 155). The TSCA Guidelines state that the degree of culpability may be used to increase or decrease the gravity-based penalty by up to 15%. The

Penalty Policy contemplates that in the case of a Lead Disclosure Rule violation, no regulated party is entitled to a reduction based on lack of knowledge or control.

Complainant did not employ this factor to adjust the calculated proposed civil penalty.

Supplemental Environmental Projects

The Parties did not employ SEPs. Therefore, Complainant did not employ this factor to adjust the calculated proposed civil penalty.

Voluntary Disclosure of Violations Before an Inspection, Investigation, or Tip/Complaint

Respondent did not voluntary disclose the violations alleged in this action. Therefore, Complainant did not employ this factor to adjust the calculated proposed civil penalty.

Audit Policy

Respondent did not disclose its violations of Section 1018 under EPA's Audit Policy, *Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations, 60 FR 66706, December 22, 1995.*

The Penalty Policy provides that a violator who self-discloses a violation of Section 1018, but not under the Audit Policy, may still receive a reduction in penalty for such a voluntary disclosure.

Respondent did not disclose its violations of Section 1018.

Therefore, Complainant did not employ this factor to adjust the calculated civil penalty.

Small Business Policy

A violator may request assistance under the EPA's *Policy on Compliance Incentives for Small Businesses* (Small Business Policy) which provides that a business with fewer than 100 employees is eligible for elimination of the entire civil penalty if the violator participates in the

compliance assistance program or conducts a voluntary self-audit and has: (1) made a good faith effort to comply; (2) is a first-time violator; (3) has remedied the violations in a reasonable time; and (4) the violation does not present a significant health or environmental threat and does not involve criminal conduct. (CX 8 at 156). The Small Business Policy provides for the elimination of penalties if a small business meets its four qualifying criteria and agrees to participate in the compliance assistance program or conducts a voluntary self-audit.

Respondent has not sought assistance under the Small Business s Policy and did not meet the above criteria.

Therefore, Complainant did not employ this factor to adjust the calculated civil penalty.

Other Unique Factors-No Known Risk or Reduced Risk of Exposure

Complainant will adjust the penalty downward by 80% where the responsible party provides documentation that the target housing is certified lead-based paint free. (CX 8 at 157). The TSCA Guidelines provide no reduction for costs spent by the violator in cleaning up or otherwise mitigating the harm caused by the violation. 45 Fed. Reg. 59775

Respondent provided no documentation its property is lead-free. Further, evidence demonstrates the subject Residential Dwellings include lead-based paint and lead-based paint hazards.

Therefore, Complainant did not employ this factor to adjust the calculated civil penalty.

Attitude

Complainant may make three separate reductions of up to 10% each to the gravity-based penalty based upon the following components: (1) cooperation; (2) immediate good faith efforts

to comply; and (3) timely settlement. (CX 8 at 158). TSCA Guidelines have no reduction for attitude.

Complainant did not make a reduction of the gravity-based penalty for cooperation or under immediate steps taken to comply since the record does not show that Respondent made attempts to go back to current tenants to correct its previous failures to disclose to them.

Further, Complainant respectfully requests that pursuant to 40 C.F.R. § 22.19(g)(1), this Court should draw an adverse inference with respect to Respondent's failure to provide its tenants with the results of lead paint testing performed in Respondent's building or to provide testimony or other evidence regarding the results of this testing. The reduction for timely settlement does not apply where a case has proceeded to a hearing.

Therefore, Complainant did not employ this factor to adjust the calculated civil penalty.

VII. CONCLUSION

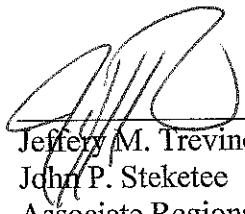
Respondent has shown no remorse for her multiple failures to comply with the TSCA Lead Disclosure Rule. While she admitted to being aware of the TSCA Lead Disclosure Rule in 2003, (Tr. 220), she testified that her only minor transgression is that was that she could have been more thorough. (Tr. 218). However, the documentary and testimonial evidence demonstrate a complete and significant pattern or her failure to know or understand the TSCA Lead Disclosure Rule; its importance; her legal obligations under it, and her resulting significant responsibilities to her lessors. Respondent testified she failed or refused to provide Complainant with a single copy of a single lease with a proper and completed TSCA Lead Disclosure Form, and specifically stated, "Well, no. You know why? 'Cause I'm just an ordinary person." (Tr. 220). Respondent testified she backdated paperwork. (Tr. 204). Respondent testified her

paperwork was not in order. (Tr. 205). Respondent testified to missing documentation. (Tr. 210). Respondent testified "If I failed to, when I got it back, to have it – look and see if they actually did that, yes, I'm guilty of that." (Tr. 217). Respondent testified "Weather or not I make sure my documents are initialed is a very small issue," (Answer, and Respondent Exhibit No. 3, p. 1); "I wish my problems was as simple as making sure the tenant initial the proper box," (Answer, and Respondent Exhibit No. 3, p. 2); and " . . . I cannot see, the federal government coming after me, little old me. Wasting taxpayers' money . . . " (Answer, p. 3). Essentially her argument is that she is the victim in this matter, not her tenants, and that despite her multiple transgressions of TSCA, she did nothing wrong.

The preamble to the final rule alone reviews the devastating consequences of being exposed to lead-based paint, particularly for children and women of childbearing years. Unfortunately, Respondent remains entirely unready, unwilling, and unable to comply with the law.

That is entirely why this action remains before this court.

Respectfully submitted,



Jeffery M. Trevino
John P. Steketee
Associate Regional Counsels
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, IL 60604
(312) 886-6729
(312) 886-0558

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Dessie L. Brumfield d/b/a Brumfield Properties, LLC,	)	**Docket No. TSCA-05-2010-0014**
	)	
	)	
Respondent	)	

CERTIFICATE OF SERVICE

I hereby certify that today I filed with Ladawn Whitehead, Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604, the original and one copy of COMPLAINANT POST-HEARING BRIEF for this civil administrative action, and issued to the court and Respondent one copy by regular U.S. Mail to the following addresss:

Judge M. Lisa Buschmann
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Dessie L. Brumfield
5067 North 37th Street
Milwaukee, WI 53290

Jeffery M. Trevino

5 October 202

Date