



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 10 2011

REPLY TO THE ATTENTION OF:
L-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7666 4462

Reverend Floyd E. Rose
Rose Real Estate Properties, Inc.
410 Orange Street
Valdosta, Georgia 31601

Re: In the Matter of Rose Real Estate Properties, Inc., Docket No: **TSCA-05-2011-0004**

Dear Reverend Rose:

Enclosed is a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Rose Real Estate Properties, Inc. (you), under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact John Matson, Associate Regional Counsel at (312) 886-2243.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Karl".

Richard C. Karl
Acting Director
Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Rose Real Estate Properties, Inc.,)
Valdosta, Georgia,)
)
Respondent)
_____)

Docket No. TSCA-05-2011-0004
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

RECEIVED
MAR 11 2011

Complaint

REGIONAL HEARING CLERK
USEPA
REGION 5

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent Rose Real Estate Properties, Inc. is a corporation doing business in the State of Ohio.

Statutory and Regulatory Background

4. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Lead-Based Paint Act), 42 U.S.C. § 4852d, required the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.
5. On March 6, 1996, EPA promulgated regulations codified 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 (Disclosure Rule).
6. 40 C.F.R. § 745.102(a) required owners of more than four residential dwellings to comply with the Disclosure Rule by September 6, 1996.

7. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except for: (1) 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 (2) any 0-bedroom dwelling.

8. 40 C.F.R. § 745.103 defines “lessor” as 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.

9. 40 C.F.R. § 745.103 defines “lessee” as 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.

10. 40 C.F.R. § 745.107 requires, among other things, that the lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

11. 40 C.F.R. Part § 745.113(b)(1) requires the lessor to include within each contract or as an attachment to each contract to lease target housing, a lead warning statement stating:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

12. 40 C.F.R. § 745.113(b)(2) requires the lessor to include either within each contract or as an attachment to each contract to lease target housing, a statement disclosing either the

presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

13. 40 C.F.R. Part § 745.113(b)(3) requires a lessor 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 regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records are available.

14. 40 C.F.R. § 745.113(b)(4) requires the lessor 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 information set out in 40 C.F.R. §§ 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

15. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract, the signatures of the lessor, the agent, and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

16. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

17. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, and may assess a civil penalty of up to \$16,000 for each violation of Section 409 that occurred after January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

General Allegations

18. Complainant incorporates paragraphs 1 through 17 of this Complaint as if set forth in this paragraph.

19. Between at least June 1, 2007 and June 7, 2009, Respondent owned a residential single-family dwelling in Toledo, Ohio, located at 1420 Addington Road (Respondent's Property).

20. Respondent's Property was constructed prior to 1978.

21. Respondent's Property is "target housing" as defined in 40 C.F.R. § 745.103.

22. On August 18, 2008, representatives of EPA conducted an inspection at 3356 Elm Street, Toledo, Ohio, the home and office of Billie S. Rose, the manager of several properties Respondent owns, to monitor compliance with the Lead-Based Paint Act and the Disclosure Rule.

23. On March 5, 2009, Complainant issued an administrative subpoena to Respondent under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all rental agreements and lead-based paint disclosure documentation for rental transactions at single-family dwellings owned by Respondent from the time period April 1, 2004 to March 5, 2009.

24. Respondent provided documents to Complainant during the inspection at its office, and in response to the TSCA administrative subpoena referenced in paragraph 23, including information identifying Respondent as the owner of more than four residential single-family dwellings in Toledo, Ohio, including the dwelling located at 1420 Addington Road.

25. On the following dates, Respondent, either directly or through its authorized agent, entered into the following two written lease agreements (Contracts) with individuals for the lease of Respondent's Property:

Address	Date Lease Entered
1420 Addington Road, Toledo, OH	June 1, 2007
1420 Addington Road, Toledo, OH	June 7, 2009

26. Each of the two Contracts referenced in paragraph 25, above, covered a term of occupancy greater than 100 days.

27. Between June 1, 2007 and June 7, 2009, Respondent offered for lease its single-family dwelling, and individuals entered into Contracts to lease that dwelling on the dates listed in paragraph 25, above.

28. Respondent is a “lessor,” as defined in 40 C.F.R. § 745.103, because it has offered for lease the target housing referenced in paragraph 25, above.

29. Each individual who signed a lease to pay rent in exchange for occupancy of the dwelling referenced in paragraph 25 above, became a “lessee,” as defined in 40 C.F.R. § 745.103.

30. On June 21, 2010, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of the Lead-Based Paint Act and the Disclosure Rule, and that the complaint would seek a civil penalty of \$41,640. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent’s ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

31. On June 25, 2010, Respondent’s registered agent received the pre-filing notice letter referred to in paragraph 30, above. Respondent replied to the letter on August 3, 2010, providing a narrative response, and additional documentation concerning the violations. EPA

subsequently lowered the penalty to \$31,940.

32. Respondent claimed an inability to pay the proposed, approximate civil penalty, but did not provide sufficient facts or other information concerning its ability to pay the proposed, approximate civil penalty, despite EPA requesting on August 3, 2010, September 23, 2010, December 3, 2010, and December 9, 2010 that Respondent provide its financial information.

Counts 1 through 2

33. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

34. Respondent failed to include a lead warning statement within the following Contracts for target housing, or as an attachment to each Contract:

- Count 1: June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio; and
- Count 2: June 7, 2009 lease for 1420 Addington Road, Toledo, Ohio.

35. Based on the foregoing, Respondent violated 40 C.F.R § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 3 through 4

36. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

37. Respondent failed to include within the following Contracts for target housing, or as an attachment to each Contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence:

- Count 3: June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio; and
- Count 4: June 7, 2009 lease for 1420 Addington Road, Toledo, Ohio.

38. Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 5 through 6

39. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

40. Respondent failed to include within the following Contracts for target housing, or as an attachment to each Contract, a list of any records or reports available to Respondent that Respondent provided to the lessee regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records are available:

- Count 5: June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio; and
- Count 6: June 7, 2009 lease for 1420 Addington Road, Toledo, Ohio.

41. Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 7 through 8

42. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

43. Respondent failed to include within the following Contracts for target housing, or as an attachment to each Contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696:

- Count 7: June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio; and
- Count 8: June 7, 2009 lease for 1420 Addington Road, Toledo, Ohio.

44. Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 9 through 10

45. Complainant incorporates paragraphs 1 through 32 of this Complaint as if set forth in this paragraph.

46. Respondent failed to include within the following Contracts for target housing, or as an attachment to each Contract, the signatures of the lessor, and the lessee certifying to the accuracy of their statements and the dates of such signatures:

- Count 9: June 1, 2007 lease for 1420 Addington Road, Toledo, Ohio; and
- Count 10: June 7, 2009 lease for 1420 Addington Road, Toledo, Ohio.

47. Based on the foregoing, Respondent violated 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Proposed Civil Penalty

48. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint as follows:

Counts 1 through 2

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)	\$10,320
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)	\$2,325

Count 3 through 4

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2)	\$7,740
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2)	\$1,155

Count 5 through 6

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3)	\$2,580
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3)	\$390

Counts 7 through 8

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4)	\$5,160
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4)	\$780

Count 9 through 10

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6)	\$1,290
42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6)	\$200

Total Proposed Civil Penalty	\$31,940
-------------------------------------	-----------------

49. In determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged 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 factors as justice may require.

50. EPA calculates penalties by applying its *Section 1018 - Disclosure Rule Enforcement Response Policy* dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing

that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

51. As stated in paragraph 30, above, by letter dated June 21, 2010, EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of the Lead-Based Paint Act, and the Lead-Based Paint Act authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint, and if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

52. Respondent has not provided facts or information sufficient to indicate that the penalty should be adjusted for financial or other factors related to the alleged violation.

Rules Governing This Proceeding

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Associate Regional Counsel John Matson to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Matson at (312) 886-2243. His address is:

John Matson (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to John Matson and to:

Christine Anderson (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based, or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondent's Answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this

Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact John Matson at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to comply with TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondent in an informal conference. The terms of the

settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

3-10-11
Date

Richard C. Karl
Richard C. Karl
Acting Director
Land and Chemicals Division

RECEIVED
MAR 11 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving Rose Real Estate Properties, Inc., was filed on March 11, 2011 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7666 4462, a copy of the original to the Respondents:

Reverend Floyd E. Rose
Rose Real Estate Properties, Inc.
410 Orange Street
Valdosta, Georgia 31601

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
John Matson, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. TSCA-05-2011-0004

RECEIVED
MAR 11 2011
REGIONAL HEARING CLERK
USEPA
REGION 5