

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7

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## COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the

Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

### **General Factual Allegations**

6. Respondent is, and at all times referred to herein was a “person” within the meaning of TSCA.

7. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, for seventy-two units in Lincoln, Nebraska, including the properties leased at 2417 Vine Street #1; 1212 D Street #11; and 1315 D Street #8 in Lincoln, Nebraska (the Properties).

8. The Properties were constructed before 1978 and are “target housing” as defined by 40 C.F.R. § 745.103.

9. On December 12, 2011, EPA conducted an evaluation of Respondent’s compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and collected records and information from Respondents as part of that evaluation. Based upon that evaluation, the Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as set forth below.

### **Violations**

10. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

### **Count 1**

11. The facts stated in Paragraphs 1 through 10 above are herein incorporated.

12. Respondent entered into contracts to lease the target housing at 2417 Vine Street #1 in Lincoln, Nebraska, on or about September 21, 2011.

13. Respondent failed to conduct disclosure at the Property before the lessee was obligated under contract to lease the target housing unit in violation of 40 CFR 745.107(a).

14. Respondent's failure to perform the act indicated in Paragraph 13 above is a violation of 40 C.F.R. § 745.107(a) and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

### **Count 2**

15. The facts stated in Paragraphs 1 through 10 above are herein incorporated.

16. Respondent entered into contracts to lease the target housing at 1315 D Street #8 in Lincoln, Nebraska, on or about August 29, 2011.

17. Respondent failed to conduct disclosure at the Property before the lessee was obligated under contract to lease the target housing unit in violation of 40 CFR 745.107(a).

18. Respondent's failure to perform the act indicated in Paragraph 17 above is a violation of 40 C.F.R. § 745.107(a) and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

### **Count 3**

19. The facts stated in Paragraphs 1 through 10 above are herein incorporated.

20. Respondent entered into contracts to lease the target housing at 1212 D Street #11 in Lincoln, Nebraska, on or about October 7, 2011.

21. Respondent failed to conduct disclosure at the Property before the lessee was obligated under contract to lease the target housing unit in violation of 40 CFR 745.107(a).

22. Respondent's failure to perform the act indicated in Paragraph 21 above is a violation of 40 C.F.R. § 745.107(a) and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

### **Relief**

23. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which limits penalties assessed for violations of Section

409 of TSCA to not more than \$10,000 per violation. The Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes penalties of up to \$16,000 for violations that occur after January 12, 2009.

24. The proposed penalty of \$48,000.00 is based upon the facts alleged in this Complaint and upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including the nature, circumstances, extent and gravity of the violations, and with respect to the Respondents: a) their ability to pay, b) the effect on their ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require. The proposed penalty is in accordance with EPA's Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007, a copy of which is enclosed along with this Complaint.

25. The proposed penalty is based on the best information available to EPA at the time the Complaint is issued. The penalty may be adjusted if the Respondents establish bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

#### Payment of Proposed Penalty in Full

26. A Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total penalty \$48,000.00 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

A copy of the check must simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency

Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

Jennifer Trotter, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Checks should reference the name and docket number of this Complaint.

Payment of Proposed Penalty in Lieu of an Answer

27. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint may do so within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth above. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a)(1) of the Consolidated Rules. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. A Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject a Respondent to default, as set forth below.

**NOTICE OF OPPORTUNITY FOR HEARING**

Answer and Request for Hearing

28. A Respondent must file a written answer within thirty (30) days of receipt of this Complaint if Respondent: a) contests any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which a Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state: a) the circumstances or arguments which are alleged to constitute the grounds of any defense; b) the facts that a Respondent disputes; c) the basis for opposing the proposed penalty; and d) whether a hearing is requested.

29. The original and one copy of the answer shall be filed with the following, in accordance with Section 22.15 of the Consolidated Rules:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

A copy of the answer shall be sent to:

Jennifer Trotter, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

30. After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter (except for the filing of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(3)) must be filed with the Hearing Clerk at the following address, as appropriate:

If using the US Postal Service:

Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mailcode 1900R  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

If using UPS/FedEx/DHL:

Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Regan Building, Room M1200  
1300 Pennsylvania Avenue NW  
Washington, DC 20460.

#### Default

31. If, within thirty (30) days of receipt of a Complaint, a Respondent fails to: a) submit full payment of the proposed penalty; b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or c)

file a written answer to the Complaint; a Respondent may be found in default. Default by a Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of a Respondents' right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

#### Informal Settlement Conference

32. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference, please contact:

Jennifer Trotter, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Telephone (913) 551-7180

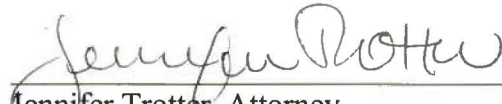
33. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

34. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

Date: 7/21/2014

  
Jamie Green, Chief  
Toxics and Pesticides Branch  
Water, Wetlands & Pesticides Division

Date: 7/22/2014

  
Jennifer Trotter, Attorney  
Office of Regional Counsel

Attachment



CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219, on 24 July 2014. A true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail, return receipt requested, on 24 July 2014 to:

Mr. Ryan Reinke  
5200 N 20<sup>th</sup> Street  
Lincoln, Nebraska 68521

Vinyl 10/1/14 Secretary  
Name/Date

### PENALTY CALCULATION

The initial proposed gravity-based penalty was \$48,000. The basis for this proposed penalty is as follows:

[illegible]