



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109

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Office of Regional Hearing Clerk

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April 2, 2012

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Mail Code: ORA18-1
Boston, MA 02109-3912

Re: In the Matter of: Edward Franco d/b/a El Paso Management et al.
Docket Number: TSCA-01-2012-0022

Dear Ms. Santiago:

Please find enclosed for filing an original and a copy of the Administrative Complaint (with Attachment 1) and the Certificate of Service regarding the above matter.

Please do not hesitate to contact me at (617) 918-1171 should you have any questions regarding the enclosed.

Sincerely,

Yen P. Hoang

cc: Edward Franco, d/b/a El Paso Management
80 Bragdon Realty Trust, Carmen Vasquez as Trustee
First West Fourth LLC, Matera Vopat, Resident Agent

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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2012 MAR 33 A 10:45
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In the Matter of:)
)
Edward Franco)
d/b/a El Paso Management)
15 Rutland Square)
Brockton, MA 02301)
)
80 Bragdon Realty Trust)
Carmen R. Vasquez as Trustee)
3 Farrington Lane)
Canton, MA 02021)
)
First West Fourth, LLC)
1372 Hancock Street, Suite 401)
Quincy, MA 02169)
)
Respondents.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

Docket Number:
TSCA-01-2012-0022

ADMINISTRATIVE COMPLAINT;
NOTICE OF OPPORTUNITY FOR
HEARING; AND NOTICE
OF OPPORTUNITY TO CONFER

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the

Legal Enforcement Manager of the Office of Environmental Stewardship, U.S.

Environmental Protection Agency (“EPA”), Region 1.

II. NATURE OF THE ACTION

2. The Respondents in this action, Edward Franco, doing business as El Paso Management; 80 Bragdon Realty Trust with Carmen R. Vasquez as Trustee; and First West Fourth, LLC are hereby notified of Complainant’s determination that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property,” as set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

III. STATUTORY AND REGULATORY BACKGROUND

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account in the rental of homes and apartments.

4. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act is termed “target housing.” “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling.

6. The Disclosure Rule requires that, prior to the lessee becoming obligated to lease target housing, the lessor of such housing must, among other things:

- (a) provide the lessee with an EPA-approved lead hazard information pamphlet;
- (b) disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased;
- (c) provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased; and
- (d) include, within or as an attachment to a lease contract, a Lead Warning Statement.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule is a violation of Section 409 of TSCA.

8. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of Section 409 of TSCA shall be liable to the United States for a civil penalty.

9. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation

shall be no more than \$10,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$11,000 per violation. Violations that occur on or after January 13, 2009 are subject to penalties up to \$16,000 per violation. See 40 C.F.R. Part 19; see also 73 Fed. Reg. 75340 (Dec. 11, 2008).

IV. GENERAL ALLEGATIONS

10. Respondent Edward Franco is currently or was at the time of the violations alleged in this Complaint an individual residing at 68 Lheureux Circle, Randolph, Massachusetts 02368.

11. At all times relevant to this Complaint, Respondent Edward Franco did business under the name El Paso Management at 15 Rutland Square, Brockton, Massachusetts 02301. Respondent Edward Franco employs three to four employees to manage and offer for lease residential real estate. At all times relevant to the violations alleged herein, Respondent Edward Franco is or was the owner of the property located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts, where at least some of the violations alleged herein occurred.

12. Respondent 80 Bragdon Realty Trust is a real estate trust with Carmen R. Vasquez, an individual with a mailing address of 3 Farrington Lane, Canton, Massachusetts 02021, as Trustee. The 80 Bragdon Realty Trust is or was at all times relevant to the violations alleged herein, the owner of the property located at 80 Bragdon Street, Unit 3, Dorchester, Massachusetts, where at least some of the violations alleged herein occurred.

13. Respondent First West Fourth, LLC is a limited liability corporation organized under the laws of Massachusetts with a principal place of business located at 1372 Hancock Street, Suite 401, Quincy, Massachusetts. First West Fourth, LLC is or was at all times relevant to the violations alleged herein, the owner of the property located at 142 West Fourth Street, Unit 2, South Boston, Massachusetts, where at least some of the violations alleged herein occurred.

14. At all times relevant to this Complaint, Respondent Edward Franco offered for lease and signed his name as the lessor on each and all of the written leases for the following apartment units. Thus, Respondent Edward Franco was the “lessor” as defined in 40 C.F.R. § 745.103 for all of the following apartment units:

Address	Unit #	Date Lease Signed
62 Torrey St., Dorchester, MA	3	10/23/2009
142 West Fourth St., South Boston, MA	2	08/15/2009
80 Bragdon St., Roxbury, MA	3	09/28/2009

15. At all times relevant to this Complaint, Respondents 80 Bragdon Realty Trust and First West Fourth, LLC owned and offered for lease, through Edward Franco doing business as El Paso Management, the following apartment units, and therefore, were also “lessors” for such properties as defined in 40 C.F.R. § 745.103.

Address	Unit #	Property Owner	Date Lease Signed
142 West Fourth St., South Boston, MA	2	First West Fourth, LLC	08/15/2009
80 Bragdon St., Roxbury, MA	3	80 Bragdon Realty Trust, Carmen R. Vasquez as Trustee	09/28/2009

16. All of the properties listed above in Paragraphs 14 and 15, having been constructed prior to 1978, are “target housing” as defined in 40 C.F.R. § 745.103.

17. None of the target housing listed above in Paragraphs 14 and 15 satisfied the requirements for an exemption to the provisions of the Act or the Disclosure Rule.

18. The Massachusetts Lead Poisoning Prevention and Control regulations, 105 C.M.R. § 460.100, require property owners to hire a licensed lead paint inspector to inspect housing occupied by children under six years of age for lead-based paint and/or lead-based paint hazards. After conducting an inspection, the inspector prepares a report (“Lead Inspection Report”) summarizing the findings of the inspection and provides a copy of the report to the property owner. An initial lead inspection was performed by ASAP Environmental, Inc. for each and all of the target housing units listed in Paragraphs 14 and 15. ASAP Environmental, Inc. then provided to Respondent Edward Franco the Lead Inspection Reports corresponding to each and all of said target housing units.

19. On August 3, 2011, EPA conducted a compliance inspection (“Inspection”) at Respondent Edward Franco’s office at 15 Rutland Square, Brockton, Massachusetts. During the Inspection, EPA reviewed a representative sample of lease transaction documents provided by Respondent Edward Franco’s employees and interviewed the employees to evaluate compliance with the Disclosure Rule.

20. The documents provided to EPA by the employees generally included a Massachusetts Tenant Lead Law Certification Form (hereinafter “Lead Disclosure Form”) for each lease transaction. The Lead Disclosure Form contains a Lead Warning Statement, a section entitled “Owner’s Disclosure,” a section entitled “Tenant’s Acknowledgment,” a section entitled “Agent’s Acknowledgment,” and a section under which the owner/lessor, tenant, and agent must provide their respective signature and date

of signing. Under “Owner’s Disclosure,” the owner/lessor must indicate (by circling) whether he or she has provided the tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing, including: the Lead Inspection Report, Risk Assessment Report, Letter of Interim Control, and/or Letter of Compliance.

21. The employees did not provide EPA a Lead Disclosure Form in the lease documents for the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts and the target housing located at 142 West Fourth Street, Unit 2, South Boston, Massachusetts.

22. During the Inspection, one employee, Ms. Angela Lopez, stated that she thought Lead Disclosure Forms only needed to be filled out for lessees with children.

23. For each Lead Disclosure Form in the lease documents that were provided to EPA, Respondents did not circle any of the records and reports specifically listed under the “Owner’s Disclosure” section, as described in Paragraph 20, on any of said Forms and also did not list any other record or report pertaining to lead-based paint and/or lead-based paint hazards in the housing.

24. The lessee who contracted to lease the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts on October 23, 2009 indicated on the corresponding Lead Disclosure Form that the lessee had received all available records and/or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing. This Lead Disclosure Form, however, was neither dated by the lessee nor signed by either the owner/lessor or the agent.

25. After the Inspection, EPA further reviewed the documents provided by Respondent Edward Franco's employees and observed that they had provided EPA with "original" undated Lead Disclosure Forms (instead of copies) for four (4) lease transactions, including the October 23, 2009 lease contract for the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts. These Lead Disclosure Forms were neither dated nor signed by the owner/lessor or the agent. They were, however, FAX date-stamped July 19, 2011. EPA requested an explanation from Respondent Edward Franco regarding these Lead Disclosure Forms.

26. On August 29, 2011, one of Respondent Edward Franco's employees, Ms. Damaris Medina, responded to EPA's request by telephone, stating that the Lead Disclosure Forms described in Paragraphs 24 and 25 above were signed by the lessees on or about July 20, 2011, that is, one day after EPA had sent the employees a request that they make available to EPA a representative sample of lease documents for compliance evaluation during the Inspection on August 3, 2011.

27. Complainant has identified the following violations of the Act and the Disclosure Rule based on the Inspection as well as other information and documents obtained from Respondents and/or other sources.

V. VIOLATIONS

Count 1 - Failure to Provide Lead Hazard Information Pamphlet

28. Complainant incorporates by reference Paragraphs 1 through 27.

29. Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under any contract to lease target housing, a lessor must provide the lessee with an EPA-approved lead hazard information pamphlet such as the EPA document entitled, "Protect

Your Family From Lead in Your Home,” or an equivalent pamphlet that has been approved for use in particular states by EPA (such as the *Massachusetts Tenant Lead Law Notification*).

30. Respondent Edward Franco failed to provide an EPA-approved lead hazard information pamphlet to the lessee who became obligated, under a contract signed on October 23, 2009, to lease the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts before the lessee became obligated under that contract to lease said housing.

31. Respondents Edward Franco and 80 Bragdon Realty Trust failed to provide an EPA-approved lead hazard information pamphlet to the lessee who became obligated, under a contract signed on September 28, 2009, to lease the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts before the lessee became obligated under that contract to lease said housing.

32. Respondents Edward Franco and First West Fourth, LLC failed to provide an EPA-approved lead hazard information pamphlet to the lessee who became obligated, under a contract signed on August 15, 2009, to lease the target housing located at 142 West Fourth Street, Unit 2, South Boston, Massachusetts with before the lessee became under that contract to lease said housing.

33. Respondent Edward Franco’s failure to provide the lessee who leased the target housing described in Paragraph 30 above with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R § 745.107(a)(1) and Section 409 of TSCA.

34. Respondents Edward Franco and 80 Bragdon Realty Trust's failure to provide the lessee who leased target housing described in Paragraph 31 above with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

35. Respondents Edward Franco and First West Fourth, LLC's failure to provide the lessee who leased the target housing described in Paragraph 32 above with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count 2 - Failure to Disclose the Presence of Any Known Lead-Based Paint/Lead-Based Paint Hazards and/or to Provide Available Reports

36. Complainant incorporates by reference Paragraphs 1 through 35.

37. Pursuant to 40 C.F.R. § 745.107(a)(2), the lessor must disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee becomes obligated under a contract to lease said housing. The lessor shall also disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

38. Pursuant to 40 C.F.R. § 745.107(a)(4), the lessor must provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee becomes

obligated under a contract to lease said housing, including reports regarding lead-based paint and/or lead-based paint hazards in common areas. Pursuant to 40 C.F.R. § 745.103, the term “available records” includes records in the lessor’s possession or records that were reasonably obtainable by the lessor at the time of the disclosure.

39. Respondent Edward Franco did not (a) disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or (b) provide available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts, including common areas, to the lessee who became obligated, under a contract signed on October 23, 2009, to lease said target housing before the lessee became obligated under that contract to lease said housing.

40. Respondents Edward Franco and 80 Bragdon Realty Trust did not (a) disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or (b) provide available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts, including common areas, to the lessee who became obligated, under a contract signed on September 28, 2009, to lease said target housing before the lessee became obligated under that contract to lease said housing.

41. Respondents Edward Franco and First West Fourth, LLC did not (a) disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or (b) provide available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 142 West Fourth Street, South Boston, Massachusetts, including common areas, to the lessee who became obligated,

under a contract signed on August 15, 2009, to lease said target housing before the lessee became obligated under that contract to lease said housing.

42. At the time Respondents Edward Franco, 80 Bragdon Realty Trust and First West Fourth, LLC offered to lease the target housing described in Paragraphs 39, 40 and 41, Respondents possessed or could have reasonably obtained Lead Inspection Reports prepared by ASAP Environmental, Inc. for each and all of said target housing.

43. Respondent Edward Franco's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide the lessee who leased the target housing described in Paragraph 39 above with the records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing available to Respondent before said lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R §§ 745.107(a)(2) and/or (a)(4) and Section 409 of TSCA.

44. Respondents Edward Franco and 80 Bragdon Realty Trust's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide the lessee who leased the target housing described in Paragraph 40 above with the records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing available to Respondents before said lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R §§ 745.107(a)(2) and/or (a)(4) and Section 409 of TSCA.

45. Respondents Edward Franco and First West Fourth, LLC's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide the lessee who leased the target housing described in Paragraph 41

above with the records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing available to Respondents before said lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R §§ 745.107(a)(2) and/or (a)(4) and Section 409 of TSCA.

Count 3 - Failure to Include Lead Warning Statement

46. Complainant incorporates by reference Paragraphs 1 through 45.

47. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include the Lead Warning Statement within or as an attachment to the contract.

48. Respondent Edward Franco did not include the Lead Warning Statement within or as an attachment to the contract with the lessee who became obligated, under a contract signed on October 23, 2009, to lease the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts before the lessee became obligated under that contract to lease said housing.

49. Respondents Edward Franco and 80 Bragdon Realty Trust did not include the Lead Warning Statement within or as an attachment to the contract with the lessee who became obligated, under a contract signed on September 28, 2009, to lease the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts before the lessee became obligated under that contract to lease said housing.

50. Respondents Edward Franco and First West Fourth, LLC did not include the Lead Warning Statement within or as an attachment to the contract with the lessee who became obligated, under a contract signed on August 15, 2009, to lease the target

housing located at 142 West Fourth Street, South Boston, Massachusetts before the lessee became obligated under that contract to lease said housing.

51. Respondent Edward Franco's failure to include the Lead Warning Statement within or as an attachment to the contract to lease the target housing described in Paragraph 48 constitutes one (1) violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

52. Respondents Edward Franco and 80 Bragdon Realty Trust's failure to include the Lead Warning Statement within or as an attachment to the contract to lease the target housing described in Paragraph 49 constitutes one (1) violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

53. Respondents Edward Franco and First West Fourth, LLC's failure to include the Lead Warning Statement within or as an attachment to the contract to lease the target housing described in Paragraph 50 constitutes one (1) violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

VI. PROPOSED PENALTY

54. Based on the violations described in this Complaint, a total civil penalty of \$58,100 is hereby proposed to be assessed against the Respondents.¹ The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. § 745.118(f), as well as the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and its implementing regulations at 40 C.F.R. Part 19.

¹ This amount reflects the total gravity-based penalty for all counts, \$58,120, after it has been rounded off to the nearest unit of \$100 as required by the memorandum dated December 29, 2008 from Granta Nakayama, former U.S. EPA Assistant Administrator.

55. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires that Complainant consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

56. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA’s December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (the “ERP”), a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

57. The penalties proposed for each of the violations alleged in this Complaint are set forth, below:

Count	Regulation(s) Violated	Description	Penalty
1	40 C.F.R. § 745.107(a)(1)	Failure to provide lead hazard information pamphlet	\$ 21,680
2	40 C.F.R. §§ 745.107(a)(2) and/or (a)(4)	Failure to disclose lead-based paint/paint hazards and/or to provide available reports	\$ 21,680
3	40 C.F.R. § 745.113(b)(1)	Failure to include Lead Warning Statement in lease	\$ 14,760
		Total	\$ 58,100 (rounded to nearest \$100)

The document marked as Attachment 1 to this Complaint provides a more detailed explanation of the penalty proposed herein. The proposed penalty was developed based upon the best information available to Complainant but may be adjusted if Respondents

establish a *bona fide* claim of inability to pay or other issues relevant to determining an appropriate penalty.

VII. QUICK RESOLUTION

58. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondents have the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's or certified check, payable to "The Treasurer, United States of America." The check should also note the docket number of this Complaint (TSCA-01-2012-0022) and should be forwarded to:

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

In addition, at the time of payment, Respondents should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

and

Yen P. Hoang
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA17-1
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondents need not file an Answer. If Respondents agree to pay the penalty but need additional time,

Respondents may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondents need not file an Answer, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondents to default. See 40 C.F.R. § 22.18(a).

59. Any settlement in this matter shall be made final by the issuance of a written Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

60. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondents have a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondents' written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

61. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondents have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondents to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments

alleged to constitute the grounds of any defense; the facts that Respondents dispute; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

62. Respondents shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to the Regional Hearing Clerk at the following address:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

Respondents shall also serve a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to Yen P. Hoang, the attorney assigned to represent Complainant and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Yen P. Hoang
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA17-1
Boston, Massachusetts 02109-3912

63. If Respondents fail to file a timely Answer to the Complaint, Respondents may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable

by Respondents, without further proceedings, thirty (30) days after the default order becomes final.

IX. OPPORTUNITY FOR INFORMAL SETTLEMENT CONFERENCE

64. Whether or not a hearing is requested upon filing an Answer, Respondents may confer informally with Complainant or her designee concerning the violations alleged in this Complaint. Such conference provides Respondents with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

65. To explore the possibility of settlement, Respondents or Respondents' counsel should contact Yen P. Hoang, the attorney of record, at the address cited above or by calling (617) 918-1171. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted in order to avoid default.

X. CONTINUED COMPLIANCE OBLIGATION

66. Neither assessment nor payment of an administrative penalty shall affect Respondents' continuing obligation to comply with all applicable requirements of federal law.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

3/29/12
Date

ATTACHMENT 1

In the Matter of Edward Franco d/b/a El Paso Management et al. Docket Number TSCA-01-2012-0022

PROPOSED PENALTY SUMMARY

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERP"), EPA proposes a total civil penalty in the amount of fifty eight thousand and one hundred dollars¹ (\$58,100) to be assessed against Respondents Edward Franco (doing business as El Paso Management), 80 Bragdon Realty Trust, and First West Fourth, LLC as follows:²

COUNT 1. FAILURE TO PROVIDE LEAD HAZARD INFORMATION PAMPHLET

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home*, or an equivalent pamphlet that has been approved for use by EPA.

Circumstance Level: Failure to provide a lessee an EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.107(a)(1), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

¹ This amount reflects the total gravity-based penalty for all counts (\$58,120) after it has been rounded off to the nearest unit of \$100 as required by the memorandum dated December 29, 2008 from Granta Nakayama, former U.S. EPA Assistant Administrator.

² Section 1018(b)(5) of the Act provides that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Penalties of up to \$11,000 per violation may be assessed for violations occurring between July 28, 1997, and January 12, 2009, pursuant to 40 C.F.R. § 745.118(f), the Debt Collection Improvement Act of 1996, found at 31 U.S.C. § 3701, and 40 C.F.R. Part 19. Effective January 12, 2009, the maximum penalty per violation is \$16,000. 73 Fed. Reg. 75340-46 (December 11, 2008) and 40 C.F.R. Part 19.

As described in Paragraphs 28 through 35 of the Complaint, Respondents failed to provide an EPA-approved lead hazard information pamphlet to lessees who leased the following target housing units:

Respondent(s)	Address	Unit #	Date Lease Signed	Children	Extent of Harm	Gravity-Based Penalty
Edward Franco	62 Torrey St., Dorchester, MA	3	10/23/2009	Yes, one under 6	Major	\$16000
Edward Franco and 80 Bragdon Realty Trust	80 Bragdon St., Roxbury, MA	3	09/28/2009	None	Minor	\$2840
Edward Franco and First West Fourth, LLC	142 W. Fourth St., South Boston, MA	2	08/15/2009	None	Minor	\$2840

Accordingly, the total proposed penalty for the violations alleged in Count 1 is \$ 21,680.

COUNT 2. FAILURE TO DISCLOSE PRESENCE OF ANY KNOWN LEAD-BASED PAINT / PAINT HAZARDS AND/OR TO PROVIDE AVAILABLE REPORTS

Provision Violated: 40 C.F.R. § 745.107(a)(2) requires lessors to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards in the target housing and 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees with any records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing.

Circumstance Level: Failure to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide lessees with any records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 745.107(a)(2)/ (a)(4), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(2)/(a)(4) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or

pregnant women warrants a *minor* extent factor.

As described in Paragraphs 36 through 45 of the Complaint, Respondents failed to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide any records or reports available to the lessor pertaining to lead-based paint in the target housing to lessees who leased the following units:

Respondent(s)	Address	Unit #	Date Lease Signed	Children	Extent of Harm	Gravity-Based Penalty
Edward Franco	62 Torrey St., Dorchester, MA	3	10/23/2009	Yes, one under 6	Major	\$16000
Edward Franco and 80 Bragdon Realty Trust	80 Bragdon St., Roxbury, MA	3	09/28/2009	None	Minor	\$2840
Edward Franco and First West Fourth, LLC	142 West Fourth St., South Boston, MA	2	08/15/2009	None	Minor	\$2840

Accordingly, the total proposed penalty for the violations alleged in Count 2 is \$ 21,680.

COUNT 3. FAILURE TO INCLUDE LEAD WARNING STATEMENT

Provision Violated: 40 C.F.R. § 745.113(b)(1) requires that each contract to lease target housing include as an attachment, or within the contract, the Lead Warning Statement.

Circumstance Level: Failure to include the Lead Warning Statement in the language of the lease contract, or an attachment thereto, pursuant to 40 C.F.R. § 745.113(b)(1), results in a *high probability* of impairing a lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

As described in Paragraphs 46 through 53 of the Complaint, Respondents failed to include the Lead Warning Statement as an attachment or within the contracts to lease target housing with

lessees who leased the following target housing units:

Respondent(s)	Address	Unit #	Date Lease Signed	Children	Extent of Harm	Gravity-Based Penalty
Edward Franco	62 Torrey St., Dorchester, MA	3	10/23/2009	Yes, one under 6	Major	\$11340
Edward Franco and 80 Bragdon Realty Trust	80 Bragdon St., Roxbury, MA	3	09/28/2009	None	Minor	\$1710
Edward Franco and First West Fourth, LLC	142 West Fourth St., South Boston, MA	2	08/15/2009	None	Minor	\$1710

Accordingly, the total proposed penalty for the violations alleged in Count 3 is \$14,760.

In the Matter of: Edward Franco d/b/a El Paso Management et al.
Docket Number TSCA-01-2012-0022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Attachment 1 to said Complaint have been sent to the following persons on the date noted below:

Original and one copy
hand delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

Copy by Certified Mail-
Return Receipt Requested

Edward Franco
d/b/a El Paso Management
15 Rutland Square
Brockton, Massachusetts 02301

80 Bragdon Realty Trust
Carmen R. Vasquez, Trustee
3 Farrington Lane
Canton, Massachusetts 02021

First West Fourth, LLC
Matera Vopat, Resident Agent
c/o Matera & Johnson, P.C.
1372 Hancock Street, Suite 401
Quincy, Massachusetts 02169

Date:

4/2/2012



Yen P. Hoang, Esq. (Lic. 5012398)
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA17-1
Boston, Massachusetts 02109-3912
(617) 918-1171
Email: Hoang.Yen@epamail.epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)
)
Edward Franco)
d/b/a El Paso Management)
15 Rutland Square)
Brockton, MA 02301)
)
80 Bragdon Realty Trust)
Carmen R. Vasquez as Trustee)
3 Farrington Lane)
Canton, MA 02021)
)
First West Fourth, LLC)
1372 Hancock Street, Suite 401)
Quincy, MA 02169)
)
Respondents.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

Docket Number:
TSCA-01-2012-0022

ADMINISTRATIVE COMPLAINT;
NOTICE OF OPPORTUNITY FOR
HEARING; AND NOTICE
OF OPPORTUNITY TO CONFER

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the

Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA”), Region 1.

II. NATURE OF THE ACTION

2. The Respondents in this action, Edward Franco, doing business as El Paso Management; 80 Bragdon Realty Trust with Carmen R. Vasquez as Trustee; and First West Fourth, LLC are hereby notified of Complainant’s determination that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 et seq., and the federal regulations promulgated thereunder, entitled “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property,” as set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

III. STATUTORY AND REGULATORY BACKGROUND

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account in the rental of homes and apartments.

4. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act is termed “target housing.” “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling.

6. The Disclosure Rule requires that, prior to the lessee becoming obligated to lease target housing, the lessor of such housing must, among other things:

- (a) provide the lessee with an EPA-approved lead hazard information pamphlet;
- (b) disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased;
- (c) provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased; and
- (d) include, within or as an attachment to a lease contract, a Lead Warning Statement.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule is a violation of Section 409 of TSCA.

8. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of Section 409 of TSCA shall be liable to the United States for a civil penalty.

9. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation

shall be no more than \$10,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$11,000 per violation. Violations that occur on or after January 13, 2009 are subject to penalties up to \$16,000 per violation. See 40 C.F.R. Part 19; see also 73 Fed. Reg. 75340 (Dec. 11, 2008).

IV. GENERAL ALLEGATIONS

10. Respondent Edward Franco is currently or was at the time of the violations alleged in this Complaint an individual residing at 68 Lheureux Circle, Randolph, Massachusetts 02368.

11. At all times relevant to this Complaint, Respondent Edward Franco did business under the name El Paso Management at 15 Rutland Square, Brockton, Massachusetts 02301. Respondent Edward Franco employs three to four employees to manage and offer for lease residential real estate. At all times relevant to the violations alleged herein, Respondent Edward Franco is or was the owner of the property located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts, where at least some of the violations alleged herein occurred.

12. Respondent 80 Bragdon Realty Trust is a real estate trust with Carmen R. Vasquez, an individual with a mailing address of 3 Farrington Lane, Canton, Massachusetts 02021, as Trustee. The 80 Bragdon Realty Trust is or was at all times relevant to the violations alleged herein, the owner of the property located at 80 Bragdon Street, Unit 3, Dorchester, Massachusetts, where at least some of the violations alleged herein occurred.

13. Respondent First West Fourth, LLC is a limited liability corporation organized under the laws of Massachusetts with a principal place of business located at 1372 Hancock Street, Suite 401, Quincy, Massachusetts. First West Fourth, LLC is or was at all times relevant to the violations alleged herein, the owner of the property located at 142 West Fourth Street, Unit 2, South Boston, Massachusetts, where at least some of the violations alleged herein occurred.

14. At all times relevant to this Complaint, Respondent Edward Franco offered for lease and signed his name as the lessor on each and all of the written leases for the following apartment units. Thus, Respondent Edward Franco was the “lessor” as defined in 40 C.F.R. § 745.103 for all of the following apartment units:

Address	Unit #	Date Lease Signed
62 Torrey St., Dorchester, MA	3	10/23/2009
142 West Fourth St., South Boston, MA	2	08/15/2009
80 Bragdon St., Roxbury, MA	3	09/28/2009

15. At all times relevant to this Complaint, Respondents 80 Bragdon Realty Trust and First West Fourth, LLC owned and offered for lease, through Edward Franco doing business as El Paso Management, the following apartment units, and therefore, were also “lessors” for such properties as defined in 40 C.F.R. § 745.103.

Address	Unit #	Property Owner	Date Lease Signed
142 West Fourth St., South Boston, MA	2	First West Fourth, LLC	08/15/2009
80 Bragdon St., Roxbury, MA	3	80 Bragdon Realty Trust, Carmen R. Vasquez as Trustee	09/28/2009

16. All of the properties listed above in Paragraphs 14 and 15, having been constructed prior to 1978, are “target housing” as defined in 40 C.F.R. § 745.103.

17. None of the target housing listed above in Paragraphs 14 and 15 satisfied the requirements for an exemption to the provisions of the Act or the Disclosure Rule.

18. The Massachusetts Lead Poisoning Prevention and Control regulations, 105 C.M.R. § 460.100, require property owners to hire a licensed lead paint inspector to inspect housing occupied by children under six years of age for lead-based paint and/or lead-based paint hazards. After conducting an inspection, the inspector prepares a report (“Lead Inspection Report”) summarizing the findings of the inspection and provides a copy of the report to the property owner. An initial lead inspection was performed by ASAP Environmental, Inc. for each and all of the target housing units listed in Paragraphs 14 and 15. ASAP Environmental, Inc. then provided to Respondent Edward Franco the Lead Inspection Reports corresponding to each and all of said target housing units.

19. On August 3, 2011, EPA conducted a compliance inspection (“Inspection”) at Respondent Edward Franco’s office at 15 Rutland Square, Brockton, Massachusetts. During the Inspection, EPA reviewed a representative sample of lease transaction documents provided by Respondent Edward Franco’s employees and interviewed the employees to evaluate compliance with the Disclosure Rule.

20. The documents provided to EPA by the employees generally included a Massachusetts Tenant Lead Law Certification Form (hereinafter “Lead Disclosure Form”) for each lease transaction. The Lead Disclosure Form contains a Lead Warning Statement, a section entitled “Owner’s Disclosure,” a section entitled “Tenant’s Acknowledgment,” a section entitled “Agent’s Acknowledgment,” and a section under which the owner/lessor, tenant, and agent must provide their respective signature and date

of signing. Under "Owner's Disclosure," the owner/lessor must indicate (by circling) whether he or she has provided the tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing, including: the Lead Inspection Report, Risk Assessment Report, Letter of Interim Control, and/or Letter of Compliance.

21. The employees did not provide EPA a Lead Disclosure Form in the lease documents for the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts and the target housing located at 142 West Fourth Street, Unit 2, South Boston, Massachusetts.

22. During the Inspection, one employee, Ms. Angela Lopez, stated that she thought Lead Disclosure Forms only needed to be filled out for lessees with children.

23. For each Lead Disclosure Form in the lease documents that were provided to EPA, Respondents did not circle any of the records and reports specifically listed under the "Owner's Disclosure" section, as described in Paragraph 20, on any of said Forms and also did not list any other record or report pertaining to lead-based paint and/or lead-based paint hazards in the housing.

24. The lessee who contracted to lease the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts on October 23, 2009 indicated on the corresponding Lead Disclosure Form that the lessee had received all available records and/or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing. This Lead Disclosure Form, however, was neither dated by the lessee nor signed by either the owner/lessor or the agent.

25. After the Inspection, EPA further reviewed the documents provided by Respondent Edward Franco's employees and observed that they had provided EPA with "original" undated Lead Disclosure Forms (instead of copies) for four (4) lease transactions, including the October 23, 2009 lease contract for the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts. These Lead Disclosure Forms were neither dated nor signed by the owner/lessor or the agent. They were, however, FAX date-stamped July 19, 2011. EPA requested an explanation from Respondent Edward Franco regarding these Lead Disclosure Forms.

26. On August 29, 2011, one of Respondent Edward Franco's employees, Ms. Damaris Medina, responded to EPA's request by telephone, stating that the Lead Disclosure Forms described in Paragraphs 24 and 25 above were signed by the lessees on or about July 20, 2011, that is, one day after EPA had sent the employees a request that they make available to EPA a representative sample of lease documents for compliance evaluation during the Inspection on August 3, 2011.

27. Complainant has identified the following violations of the Act and the Disclosure Rule based on the Inspection as well as other information and documents obtained from Respondents and/or other sources.

V. VIOLATIONS

Count 1 - Failure to Provide Lead Hazard Information Pamphlet

28. Complainant incorporates by reference Paragraphs 1 through 27.

29. Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under any contract to lease target housing, a lessor must provide the lessee with an EPA-approved lead hazard information pamphlet such as the EPA document entitled, "Protect

Your Family From Lead in Your Home,” or an equivalent pamphlet that has been approved for use in particular states by EPA (such as the *Massachusetts Tenant Lead Law Notification*).

30. Respondent Edward Franco failed to provide an EPA-approved lead hazard information pamphlet to the lessee who became obligated, under a contract signed on October 23, 2009, to lease the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts before the lessee became obligated under that contract to lease said housing.

31. Respondents Edward Franco and 80 Bragdon Realty Trust failed to provide an EPA-approved lead hazard information pamphlet to the lessee who became obligated, under a contract signed on September 28, 2009, to lease the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts before the lessee became obligated under that contract to lease said housing.

32. Respondents Edward Franco and First West Fourth, LLC failed to provide an EPA-approved lead hazard information pamphlet to the lessee who became obligated, under a contract signed on August 15, 2009, to lease the target housing located at 142 West Fourth Street, Unit 2, South Boston, Massachusetts with before the lessee became under that contract to lease said housing.

33. Respondent Edward Franco’s failure to provide the lessee who leased the target housing described in Paragraph 30 above with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R § 745.107(a)(1) and Section 409 of TSCA.

34. Respondents Edward Franco and 80 Bragdon Realty Trust's failure to provide the lessee who leased target housing described in Paragraph 31 above with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

35. Respondents Edward Franco and First West Fourth, LLC's failure to provide the lessee who leased the target housing described in Paragraph 32 above with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count 2 - Failure to Disclose the Presence of Any Known Lead-Based Paint/Lead-Based Paint Hazards and/or to Provide Available Reports

36. Complainant incorporates by reference Paragraphs 1 through 35.

37. Pursuant to 40 C.F.R. § 745.107(a)(2), the lessor must disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee becomes obligated under a contract to lease said housing. The lessor shall also disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

38. Pursuant to 40 C.F.R. § 745.107(a)(4), the lessor must provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee becomes

obligated under a contract to lease said housing, including reports regarding lead-based paint and/or lead-based paint hazards in common areas. Pursuant to 40 C.F.R. § 745.103, the term “available records” includes records in the lessor’s possession or records that were reasonably obtainable by the lessor at the time of the disclosure.

39. Respondent Edward Franco did not (a) disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or (b) provide available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts, including common areas, to the lessee who became obligated, under a contract signed on October 23, 2009, to lease said target housing before the lessee became obligated under that contract to lease said housing.

40. Respondents Edward Franco and 80 Bragdon Realty Trust did not (a) disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or (b) provide available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts, including common areas, to the lessee who became obligated, under a contract signed on September 28, 2009, to lease said target housing before the lessee became obligated under that contract to lease said housing.

41. Respondents Edward Franco and First West Fourth, LLC did not (a) disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or (b) provide available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing located at 142 West Fourth Street, South Boston, Massachusetts, including common areas, to the lessee who became obligated,

under a contract signed on August 15, 2009, to lease said target housing before the lessee became obligated under that contract to lease said housing.

42. At the time Respondents Edward Franco, 80 Bragdon Realty Trust and First West Fourth, LLC offered to lease the target housing described in Paragraphs 39, 40 and 41, Respondents possessed or could have reasonably obtained Lead Inspection Reports prepared by ASAP Environmental, Inc. for each and all of said target housing.

43. Respondent Edward Franco's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide the lessee who leased the target housing described in Paragraph 39 above with the records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing available to Respondent before said lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R §§ 745.107(a)(2) and/or (a)(4) and Section 409 of TSCA.

44. Respondents Edward Franco and 80 Bragdon Realty Trust's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide the lessee who leased the target housing described in Paragraph 40 above with the records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing available to Respondents before said lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R §§ 745.107(a)(2) and/or (a)(4) and Section 409 of TSCA.

45. Respondents Edward Franco and First West Fourth, LLC's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide the lessee who leased the target housing described in Paragraph 41

above with the records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing available to Respondents before said lessee became obligated under a contract to lease said housing constitutes one (1) violation of 40 C.F.R §§ 745.107(a)(2) and/or (a)(4) and Section 409 of TSCA.

Count 3 - Failure to Include Lead Warning Statement

46. Complainant incorporates by reference Paragraphs 1 through 45.

47. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include the Lead Warning Statement within or as an attachment to the contract.

48. Respondent Edward Franco did not include the Lead Warning Statement within or as an attachment to the contract with the lessee who became obligated, under a contract signed on October 23, 2009, to lease the target housing located at 62 Torrey Street, Unit 3, Dorchester, Massachusetts before the lessee became obligated under that contract to lease said housing.

49. Respondents Edward Franco and 80 Bragdon Realty Trust did not include the Lead Warning Statement within or as an attachment to the contract with the lessee who became obligated, under a contract signed on September 28, 2009, to lease the target housing located at 80 Bragdon Street, Unit 3, Roxbury, Massachusetts before the lessee became obligated under that contract to lease said housing.

50. Respondents Edward Franco and First West Fourth, LLC did not include the Lead Warning Statement within or as an attachment to the contract with the lessee who became obligated, under a contract signed on August 15, 2009, to lease the target

housing located at 142 West Fourth Street, South Boston, Massachusetts before the lessee became obligated under that contract to lease said housing.

51. Respondent Edward Franco's failure to include the Lead Warning Statement within or as an attachment to the contract to lease the target housing described in Paragraph 48 constitutes one (1) violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

52. Respondents Edward Franco and 80 Bragdon Realty Trust's failure to include the Lead Warning Statement within or as an attachment to the contract to lease the target housing described in Paragraph 49 constitutes one (1) violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

53. Respondents Edward Franco and First West Fourth, LLC's failure to include the Lead Warning Statement within or as an attachment to the contract to lease the target housing described in Paragraph 50 constitutes one (1) violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

VI. PROPOSED PENALTY

54. Based on the violations described in this Complaint, a total civil penalty of \$58,100 is hereby proposed to be assessed against the Respondents.¹ The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. § 745.118(f), as well as the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and its implementing regulations at 40 C.F.R. Part 19.

¹ This amount reflects the total gravity-based penalty for all counts, \$58,120, after it has been rounded off to the nearest unit of \$100 as required by the memorandum dated December 29, 2008 from Granta Nakayama, former U.S. EPA Assistant Administrator.

55. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires that Complainant consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

56. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA’s December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (the “ERP”), a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

57. The penalties proposed for each of the violations alleged in this Complaint are set forth, below:

Count	Regulation(s) Violated	Description	Penalty
1	40 C.F.R. § 745.107(a)(1)	Failure to provide lead hazard information pamphlet	\$ 21,680
2	40 C.F.R. §§ 745.107(a)(2) and/or (a)(4)	Failure to disclose lead-based paint/paint hazards and/or to provide available reports	\$ 21,680
3	40 C.F.R. § 745.113(b)(1)	Failure to include Lead Warning Statement in lease	\$ 14,760
		Total	\$ 58,100 (rounded to nearest \$100)

The document marked as Attachment 1 to this Complaint provides a more detailed explanation of the penalty proposed herein. The proposed penalty was developed based upon the best information available to Complainant but may be adjusted if Respondents

establish a *bona fide* claim of inability to pay or other issues relevant to determining an appropriate penalty.

VII. QUICK RESOLUTION

58. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondents have the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's or certified check, payable to "The Treasurer, United States of America." The check should also note the docket number of this Complaint (TSCA-01-2012-0022) and should be forwarded to:

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

In addition, at the time of payment, Respondents should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

and

Yen P. Hoang
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA17-1
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondents need not file an Answer. If Respondents agree to pay the penalty but need additional time,

Respondents may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondents need not file an Answer, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondents to default. See 40 C.F.R. § 22.18(a).

59. Any settlement in this matter shall be made final by the issuance of a written Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

60. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondents have a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondents' written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

61. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondents have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondents to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments

alleged to constitute the grounds of any defense; the facts that Respondents dispute; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

62. Respondents shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to the Regional Hearing Clerk at the following address:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

Respondents shall also serve a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to Yen P. Hoang, the attorney assigned to represent Complainant and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Yen P. Hoang
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA17-1
Boston, Massachusetts 02109-3912

63. If Respondents fail to file a timely Answer to the Complaint, Respondents may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable

by Respondents, without further proceedings, thirty (30) days after the default order becomes final.

IX. OPPORTUNITY FOR INFORMAL SETTLEMENT CONFERENCE

64. Whether or not a hearing is requested upon filing an Answer, Respondents may confer informally with Complainant or her designee concerning the violations alleged in this Complaint. Such conference provides Respondents with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

65. To explore the possibility of settlement, Respondents or Respondents' counsel should contact Yen P. Hoang, the attorney of record, at the address cited above or by calling (617) 918-1171. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted in order to avoid default.

X. CONTINUED COMPLIANCE OBLIGATION

66. Neither assessment nor payment of an administrative penalty shall affect Respondents' continuing obligation to comply with all applicable requirements of federal law.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

3/29/12
Date

ATTACHMENT 1

In the Matter of Edward Franco d/b/a El Paso Management et al.
Docket Number TSCA-01-2012-0022

PROPOSED PENALTY SUMMARY

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERP"), EPA proposes a total civil penalty in the amount of fifty eight thousand and one hundred dollars¹ (\$58,100) to be assessed against Respondents Edward Franco (doing business as El Paso Management), 80 Bragdon Realty Trust, and First West Fourth, LLC as follows:²

COUNT 1. FAILURE TO PROVIDE LEAD HAZARD INFORMATION PAMPHLET

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home*, or an equivalent pamphlet that has been approved for use by EPA.

Circumstance Level: Failure to provide a lessee an EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.107(a)(1), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

¹ This amount reflects the total gravity-based penalty for all counts (\$58,120) after it has been rounded off to the nearest unit of \$100 as required by the memorandum dated December 29, 2008 from Granta Nakayama, former U.S. EPA Assistant Administrator.

² Section 1018(b)(5) of the Act provides that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Penalties of up to \$11,000 per violation may be assessed for violations occurring between July 28, 1997, and January 12, 2009, pursuant to 40 C.F.R. § 745.118(f), the Debt Collection Improvement Act of 1996, found at 31 U.S.C. § 3701, and 40 C.F.R. Part 19. Effective January 12, 2009, the maximum penalty per violation is \$16,000. 73 Fed. Reg. 75340-46 (December 11, 2008) and 40 C.F.R. Part 19.

As described in Paragraphs 28 through 35 of the Complaint, Respondents failed to provide an EPA-approved lead hazard information pamphlet to lessees who leased the following target housing units:

Respondent(s)	Address	Unit #	Date Lease Signed	Children	Extent of Harm	Gravity-Based Penalty
Edward Franco	62 Torrey St., Dorchester, MA	3	10/23/2009	Yes, one under 6	Major	\$16000
Edward Franco and 80 Bragdon Realty Trust	80 Bragdon St., Roxbury, MA	3	09/28/2009	None	Minor	\$2840
Edward Franco and First West Fourth, LLC	142 W. Fourth St., South Boston, MA	2	08/15/2009	None	Minor	\$2840

Accordingly, the total proposed penalty for the violations alleged in Count 1 is \$ 21,680.

COUNT 2. FAILURE TO DISCLOSE PRESENCE OF ANY KNOWN LEAD-BASED PAINT / PAINT HAZARDS AND/OR TO PROVIDE AVAILABLE REPORTS

Provision Violated: 40 C.F.R. § 745.107(a)(2) requires lessors to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards in the target housing and 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees with any records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing.

Circumstance Level: Failure to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide lessees with any records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 745.107(a)(2)/ (a)(4), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(2)/(a)(4) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or

pregnant women warrants a *minor* extent factor.

As described in Paragraphs 36 through 45 of the Complaint, Respondents failed to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide any records or reports available to the lessor pertaining to lead-based paint in the target housing to lessees who leased the following units:

Respondent(s)	Address	Unit #	Date Lease Signed	Children	Extent of Harm	Gravity-Based Penalty
Edward Franco	62 Torrey St., Dorchester, MA	3	10/23/2009	Yes, one under 6	Major	\$16000
Edward Franco and 80 Bragdon Realty Trust	80 Bragdon St., Roxbury, MA	3	09/28/2009	None	Minor	\$2840
Edward Franco and First West Fourth, LLC	142 West Fourth St., South Boston, MA	2	08/15/2009	None	Minor	\$2840

Accordingly, the total proposed penalty for the violations alleged in Count 2 is \$ 21,680.

COUNT 3. FAILURE TO INCLUDE LEAD WARNING STATEMENT

Provision Violated: 40 C.F.R. § 745.113(b)(1) requires that each contract to lease target housing include as an attachment, or within the contract, the Lead Warning Statement.

Circumstance Level: Failure to include the Lead Warning Statement in the language of the lease contract, or an attachment thereto, pursuant to 40 C.F.R. § 745.113(b)(1), results in a *high probability* of impairing a lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

As described in Paragraphs 46 through 53 of the Complaint, Respondents failed to include the Lead Warning Statement as an attachment or within the contracts to lease target housing with

lessees who leased the following target housing units:

Respondent(s)	Address	Unit #	Date Lease Signed	Children	Extent of Harm	Gravity -Based Penalty
Edward Franco	62 Torrey St., Dorchester, MA	3	10/23/2009	Yes, one under 6	Major	\$11340
Edward Franco and 80 Bragdon Realty Trust	80 Bragdon St., Roxbury, MA	3	09/28/2009	None	Minor	\$1710
Edward Franco and First West Fourth, LLC	142 West Fourth St., South Boston, MA	2	08/15/2009	None	Minor	\$1710

Accordingly, the total proposed penalty for the violations alleged in Count 3 is \$14,760.

In the Matter of: Edward Franco d/b/a El Paso Management et al.
Docket Number TSCA-01-2012-0022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Attachment 1 to said Complaint have been sent to the following persons on the date noted below:

Original and one copy
hand delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

Copy by Certified Mail-
Return Receipt Requested

Edward Franco
d/b/a El Paso Management
15 Rutland Square
Brockton, Massachusetts 02301

80 Bragdon Realty Trust
Carmen R. Vasquez, Trustee
3 Farrington Lane
Canton, Massachusetts 02021

First West Fourth, LLC
Matera Vopat, Resident Agent
c/o Matera & Johnson, P.C.
1372 Hancock Street, Suite 401
Quincy, Massachusetts 02169

Date: 4/2/2012



Yen P. Hoang, Esq. (Lic. 5012398)
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA17-1
Boston, Massachusetts 02109-3912
(617) 918-1171
Email: Hoang.Yen@epamail.epa.gov