

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

FILED

2007 DEC 12 PM 1:28

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF)

Ralph Hovannisian,)
c/o Professional Man Property Management)
1508 West Mineral King Avenue)
Visalia, CA 93291)
Respondent)
_____)

Docket No. TSCA-09-2008-0001
COMPLAINT AND NOTICE
OF OPPORTUNITY FOR
HEARING UNDER
SECTION 16(a) OF THE
TOXIC SUBSTANCES
CONTROL ACT

PRELIMINARY STATEMENT

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

Complainant is the Director of the Communities and Ecosystems Division, EPA Region IX, who has been duly delegated the authority to institute this action. Respondent is Mr. Ralph Hovannisian who owns and/or manages residential properties in the San Joaquin Valley, including Fresno, California.

This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that Complainant has reason to believe that Respondent violated Section 409 of TSCA by failing

to comply with Section 1018 and its implementing regulations, promulgated at 40 C.F.R. Part 745, Subpart F.

APPLICABLE STATUTORY AND REGULATORY SECTIONS

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

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

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

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

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

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

40 C.F.R. § 745.113(b)(1).

7. Each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. 40 C.F.R. § 745.113(b)(2).

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

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

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

11. Failure to comply with 40 C.F.R. §§ 745.107 or 745.113 is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each such violation shall not be more than \$11,000 for violations occurring after July 28, 1997. 40 C.F.R. §§ 745.118(e) and (f).

GENERAL ALLEGATIONS

12. Complainant has jurisdiction over this matter pursuant to Section 1018.

13. At all times relevant to this matter, Respondent was an individual residing at 715 N. Ferger Avenue, Fresno, California.

14. Respondent owned and managed the residential properties located at 4457 E. Bend Avenue, 2524 Barton Square, 2132 E. Floridora Avenue, 1228 Academy Avenue, 3830 E. Nevada Avenue, 4672 E. Turner Avenue, 2970 E. Illinois Avenue and 4462 E. Hammond Avenue in Fresno, California (hereinafter, the "Properties") during all times relevant to this matter.

15. At all times relevant to this matter, Respondent was the "lessor" of the Properties, as that term is defined at 40 C.F.R. § 745.103.

16. The Properties are all residential housing constructed prior to 1978.

17. At all times relevant to this matter, the Properties were "target housing," as that term is defined at 40 C.F.R. § 745.103.

18. Respondent entered into eight (8) leases with lessees for the Properties as listed below:

	Street Address	City	State	Date of Lease Signing
1	4457 E Bend Avenue	Fresno	CA	3/10/2004
2	2524 Barton Square	Fresno	CA	10/15/2003
3	2132 E Floridora Avenue	Fresno	CA	12/2/2002
4	1228 Academy Avenue	Fresno	CA	10/25/2002
5	3830 E Nevada Avenue	Fresno	CA	5/20/2003
6	4672 E Turner Avenue	Fresno	CA	2/20/2005
7	2970 E Illinois Avenue	Fresno	CA	4/1/2005
8	4462 E Hammond Avenue	Fresno	CA	7/1/2006

19. Each person who signed a lease to pay rent in exchange for occupancy of one of the Properties, above, became a "lessee" as that term is defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

20. Each lease identified in Paragraph 18 was either for a period of occupancy greater than 100 days or was subject to renewal.

21. None of the individuals units identified in Paragraph 18 are zero-bedroom dwellings (i.e. studio apartments) or housing for the elderly or disabled.

22. The Fresno County Department of Community Health Childhood Lead Poisoning Prevention Program ("Fresno County CLPPP") conducted a lead investigation of the property located at 4672 E. Turner Avenue on or around August 11, 2000.

23. In a letter dated June 18, 2001 addressed to Respondent, the Fresno County CLPPP informed Respondent of the presence of lead-based paint and/or lead-based paint hazards at 4672 E. Turner Avenue.

24. Respondent called the Fresno County CLPPP on or around July 6, 2001, to discuss the lead problems at 4672 E. Turner Avenue identified in the June 18, 2001 letter from the Fresno County CLPPP.

Counts 1-8

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. For the eight (8) leases identified in Paragraph 18, Respondent failed to provide the lessees with an EPA-approved lead hazard information pamphlet prior to the lessees being obligated under the leases.

27. Respondent's failure to provide the lessees with an EPA-approved lead hazard information pamphlet constitutes eight (8) counts of violation of 40 C.F.R. § 745.107(a)(1).

Count 9

28. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

29. Prior to February 20, 2005, Respondent had knowledge about the presence of lead-based paint and/or lead-based paint hazards at 4672 E. Turner Avenue.

30. For the February 20, 2005, lease for the rental of 4672 E. Turner Avenue, Fresno, California, Respondent failed to disclose to the lessees the presence of any known lead-based paint and/or lead-based paint hazards.

31. Respondent's failure to disclose to the lessees the presence of any known lead-based paint and/or lead-based paint hazards constitutes one (1) count of violation of 40 C.F.R. § 745.107(a)(2).

Count 10

32. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

33. Prior to February 20, 2005, Respondent had at one point in his possession or control information or notifications from the Fresno County CLPPP pertaining to the presence of lead-based paint and/or lead-based paint hazards at 4672 E. Turner Avenue.

34. For the February 20, 2005, lease for the rental of 4672 E. Turner Avenue, Fresno, California, Respondent failed to provide to the lessees any records or reports available to the Seller or Lessor pertaining to lead-based paint and/or lead-based paint hazards

35. Respondent's failure to provide to the lessees any records or reports available to the Seller or Lessor pertaining to lead based-paint and/or lead-based paint hazards constitutes one (1) count of violation of 40 C.F.R. § 745.107(a)(4).

Counts 11-18

36. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

37. For the eight (8) leases identified in Paragraph 18, Respondent failed to include, as an attachment to the lease or within the lease, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1).

38. Respondent's failure to include, as an attachment to the lease or within the lease, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1) constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(1).

Counts 19-26

39. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

40. For the eight (8) leases identified in Paragraph 18, Respondent failed to include, as an attachment to the leases or within the leases, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the units being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

41. Respondent's failure to include, as an attachment to the leases or within the leases, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the units being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(2).

Counts 27-34

42. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

43. For the eight (8) leases identified in Paragraph 18, Respondent failed to include, as an attachment to the leases or within the leases, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessees or indicate that no such records or reports are available.

44. Respondent's failure to include, as an attachment to the leases or within the leases, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessees or indicate that no such records or reports are available constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(3).

Counts 35-42

45. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

46. For the eight (8) leases identified in Paragraph 18, Respondent failed to include, as an attachment to the leases or within the leases, a statement by the lessees affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

47. Respondent's failure to include, as an attachment to the leases or within the leases, a statement by the lessees affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(4).

Counts 43-50

48. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

49. For the eight (8) leases identified in Paragraph 18, Respondent failed to include, as an attachment to the leases or within the leases, the signatures of Respondent and the lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

50. Respondent's failure to include, as an attachment to the leases or within the leases, the signatures of Respondent and the lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(6).

PROPOSED CIVIL PENALTY

Section 16(a) of TSCA and Section 1018 authorize the Administrator of the United States Environmental Protection Agency ("EPA") to assess a civil penalty not to exceed \$10,000 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. That statutory maximum civil penalty has subsequently been raised to \$11,000 per day for each violation that occurred after January 30, 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19.

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

require.

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

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

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

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

desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

The Answer must be filed with:

**Regional Hearing Clerk
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

In addition, please send a copy of the Answer and all other documents filed in this action to:

**Ivan Lieben
Assistant Regional Counsel
Office of Regional Counsel (ORC-2)
USEPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

Mr. Lieben is the attorney assigned to represent EPA in this matter. His telephone number is (415) 972-3914.

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

INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Mr. Lieben, the EPA attorney assigned to

this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

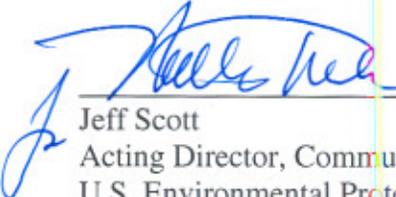
ALTERNATIVE DISPUTE RESOLUTION

The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

CONSENT AGREEMENT AND FINAL ORDER

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

DATE: 12/12/2007



Jeff Scott
Acting Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Civil Complaint ("CC"), Docket Number TSCA-9-2008- 0001, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the CC was sent to the Respondent at the following three addresses, certified mail, return receipt requested:

Ralph Hovannisian
714 North Ferger Avenue
Fresno, CA 93728
Certified Mail Number: 7007 0710 0003 6239 8694

Ralph Hovannisian
c/o Lance Armo
1260 Fulton Mall,
Fresno, CA 93721
Certified Mail Number: 7007 0710 0003 6239 8670

Ralph Hovannisian
c/o Professional Man Property Management
1508 West Mineral King Avenue
Visalia, CA 93291
Certified Mail Number: 7005 3110 0002 8247 6914



Mariela Lopez
Program and Enforcement Officer
US EPA, Region IX

12/13/07
Date