



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 21 2011

REPLY TO THE ATTENTION OF:  
C-14J

**BY INTEROFFICE POUCH, FACSIMILE AND MAIL**

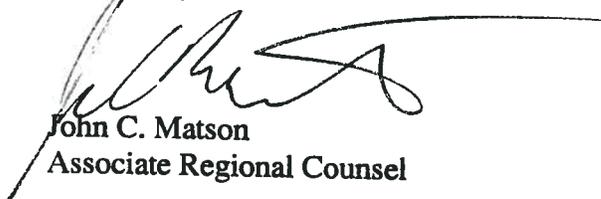
Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of Administrative Law Judges (1900L)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**RE: *In re Rose Real Estate Properties, Inc.***  
**Docket No.: TSCA-05-2011-0004**

Dear Judge Biro:

Please find enclosed a copy of Complainant's Initial Prehearing Exchange, filed on July 21, 2011 in the above-captioned matter.

Sincerely yours,



John C. Matson  
Associate Regional Counsel

Enclosure

cc: Rose Real Estate, Inc.  
Christine Anderson (LC-8J) (w/o attachments)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
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2011 JUL 21 PM 1:53

IN THE MATTER OF:

Rose Real Estate Properties, Inc.,  
Grand Rapids, Michigan,

Docket No.: TSCA-05-2011-0004

Respondent.

**COMPLAINANT'S INITIAL PREHEARING EXCHANGE**

Complainant, the Chief of the Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, the United States Environmental Protection Agency, Region 5, Chicago, Illinois, through its undersigned attorney, respectfully submits this Prehearing Information Exchange in accordance with 40 C.F.R. § 22.19(a) and the Presiding Officer's order dated June 10, 2011 (the Prehearing Order).

**I. List fact witnesses intended to be called at the hearing, along with a narrative summary of their expected testimony.**

Complainant may call any or all of the following individuals as fact witnesses in the hearing in this matter:

**A. Christine Anderson, Environmental Specialist, Land and Chemicals Division, U.S. EPA Region 5**

Ms. Anderson has detailed and extensive experience with the Toxic Substances Control Act (TSCA) statute and the regulations promulgated thereunder. Ms. Anderson's duties include serving as an enforcement officer and case developer in the investigation of violations of the regulations promulgated by U.S. EPA at 40 C.F.R. Part 745, Subpart F, entitled "Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property" (the Disclosure Rule). Ms. Anderson will testify about her review of the evidence

compiled as a result of EPA's regulatory oversight of Respondent's rental business, and the factual basis for Complainant's determination that Respondent is in violation of the Disclosure Rule and, as a result, Section 409 of TSCA, 15 U.S.C. § 2689. Ms. Anderson will testify regarding the manner in which she compiled the documentary evidence regarding Respondent's ownership of the subject properties. She will also testify about how Complainant calculated the penalty proposed in the Complaint, applying the statutory penalty factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), as explained by EPA's *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007 (Penalty Policy) (Complainant's Exhibit 4). Ms. Anderson will also testify that the June 7, 2009 lease for Respondent's property at 1420 Addington Road, Toledo, Ohio did not contain the following information: (i) a lead warning statement in compliance with 40 C.F.R. § 745.113(b)(1); (ii) a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence; (iii) a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records were available; (iv) a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3), and the lead hazard information pamphlet required under 15 U.S.C. § 2696; and (v) signatures of the lessor, the agent, and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature. (CX- 1). If necessary, Ms. Anderson will provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange.

B. Edward Pilny, Inspector, Land and Chemicals Division, U.S. EPA Region 5

Mr. Pilny has detailed and extensive experience with enforcement of the TSCA statute and the regulations promulgated thereunder regarding the Disclosure Rule. Mr. Pilny inspected Respondent's leasing office on August 18, 2008, and prepared a inspection report documenting the inspection. Mr. Pilny will provide testimony detailing the findings he made during the inspection, and the leases he obtained from Respondent's representative. If necessary, Mr. Pilny will provide testimony sufficient to authenticate documents submitted for evidence at hearing.

C. Financial Investigation Witness

Respondent did not raise inability to pay as a defense in its Answer to the Complaint. However, if Respondent does raise inability to pay issues in its prehearing exchange, Complainant will need to review Respondent's submittal of information supporting an inability to pay claim and will call a financial investigation witness to testify as to Complainant's investigation of that claim.

D. Floyd R. Rose, Rose Real Estate, Inc.

Mr. Rose is an owner of Respondent. He provided documents and other information to EPA on behalf of Respondent. If necessary, Mr. Rose will provide testimony sufficient to authenticate documents submitted for evidence at hearing, and any admissions made in his correspondence with EPA.

**II. List expert witnesses intended to be called at the hearing, along with a narrative summary of their expected testimony.**

A. Financial Expert Witness

Respondent did not raise inability to pay as a defense in its Answer to the Complaint. However, if Respondent does raise inability to pay issues in its prehearing exchange, Complainant will need to call a financial expert to provide an opinion as to Respondent's ability to pay if such

defense is raised. Upon amendment of its prehearing exchange to list such expert, Complainant will submit a resume and documents relied upon to reach the expert's opinion.

**B. Harm Witness**

Complainant reserves the right to call an expert witness in its rebuttal case if necessary, concerning the health effects associated with ingestion of or exposure to lead-based paint. This witness may offer expert opinion testimony about the specific hazards or potential hazards to human health or the environment posed by lead-based paint, including but not limited to the adverse health effects of lead poisoning, such as the effects on the development or functioning of the nervous system and internal organs. The witness may further offer opinion testimony as to how the violations alleged in the Complaint may have increased the risks of exposure of humans to lead-based paint or lead-based paint dust or other fragments. Upon amendment of its prehearing exchange to list such expert, Complainant will submit a resume and documents relied upon to reach the expert's opinion.

**III. Documents to be produced at hearing**

Pursuant to the Prehearing Order, Complainant intends to introduce the documents identified and set forth in Attachment 1. Copies of these documents are attached to this prehearing exchange.

Complainant respectfully reserves the right to elect to not introduce at the hearing any of its exhibits listed in Attachment 1, and/or, in accordance with the Prehearing Order, to supplement its prehearing exchange with additional exhibits not listed above, and will provide reasonable notice to the Presiding Officer and Respondent concerning any modifications to the above exhibit list.

**IV. Submit view as to location of hearing**

As required by the Prehearing Order, Complainant provides its statement as to the appropriate place for a hearing. Respondent resides and conducts business in Valdosta, Georgia, which has a population of approximately 45,000. Tallahassee, Florida is the nearest major metropolitan center to

Valdosta (approximately 70 miles). In light of the fact that Respondent is represented *pro se*, Complainant requests that the hearing be held at a suitable place in Valdosta, or in Tallahassee, Florida. As an alternative, Complainant requests that the hearing take place in Chicago, Illinois, where Complainant's staff is located.

**V. Provide an estimate of time needed to submit case**

Complainant anticipates needing approximately one to two days to present its direct case.

**VI. Provide a narrative statement explaining in detail the penalty calculation**

40 C.F.R. § 22.19(a)(3) and the Presiding Officer's Order require that EPA explain in its prehearing exchange how it calculated the proposed penalty in accordance with the criteria set forth in TSCA.

**A. Legal Background**

Failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5) (Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act), and 40 C.F.R. § 745.118(f). To facilitate the calculation and assessment of TSCA penalties, EPA developed its Penalty Policy (CX-4). The Penalty Policy is based on the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which are the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. The Penalty Policy was developed under the general framework established by the *Guidelines for*

*the Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59770 (September 10, 1980) (TSCA Civil Penalty Guidelines) (CX-5).

Section 1018 authorizes the imposition of a civil penalty of up to \$10,000 for each violation of a requirement of Section 1018 and its implementing regulations at 40 C.F.R. Part 745, Subpart F (*i.e.*, the Disclosure Rule), under Section 16 of TSCA, 15 U.S.C. § 2615. EPA modified the Penalty Policy on Dec. 11, 2008 to adjust for the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27, by increasing the maximum penalty amount to \$16,000 for each violation of Section 409 that occurred after January 12, 2009. *See* 73 Fed. Reg. 75,340 (Dec. 11, 2008) (CX-6), and *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)* (CX-7). Due to the 2008 modification, all violations of the Disclosure Rule occurring on or after January 12, 2009 are subject to statutory penalties adjusted for inflation.

EPA determines penalties under the Penalty Policy in two stages: 1) the determination of a “gravity-based penalty,” and 2) adjustments to the gravity-based penalty. EPA calculates the gravity-based penalty by considering: 1) the nature of the violation; 2) the circumstances of the violation; and 3) the extent of harm that may result from the violation.

The TSCA Civil Penalty Guidelines discuss the nature of the violation as the essential character of the violation and incorporate the concept of whether the violation is in the nature of a chemical control, control associated data gathering, or hazard assessment. (CX-5). The Penalty Policy categorizes all Disclosure Rule violations as “hazard assessment” in nature, since the information is vital to purchasers and lessees in weighing the risks in purchasing or leasing

target housing. (CX-4). This information is particularly vital to purchasers or lessees who are pregnant or have young children, who may be put at risk when residing in target housing.

The “circumstances” reflect the probability of harm resulting from a particular type of violation. The Penalty Policy categorizes each possible violation of the Disclosure Rule in one of six circumstance levels, based on the nature and circumstances surrounding each type of violation, and reflecting the probability of harm from each. (CX-4). The levels range from Level 1, the most serious, to Level 6, the least serious.

The “extent” factor considers the degree, range or scope of a violation. When assessing penalties for violations of the Disclosure Rule, the extent factor is based on two measurable facts: 1) the age of any children living in the target housing; and 2) whether a pregnant woman lives in the target housing. The Penalty Policy categorizes the extent of a violation as major, significant or minor, through the use of an “Extent Category Matrix.” (CX-4).

Based on the date of the occurrence of the violation, the Penalty Policy requires that the circumstance and extent factors be applied to one of two gravity-based penalty matrices. (CX-4). Each matrix (“Gravity-Based Penalty Matrix”) lists varying penalty amounts in 18 cells, ranging in value from \$200 to \$16,000 for violations occurring after January 12, 2009. (CX-8). The appropriate cell is determined according to the circumstance level, and extent category involved.

Once the gravity-based penalty is determined for a given violation, EPA applies upward or downward adjustments to the penalty in consideration of the following factors with respect to the violator: 1) ability to pay/ability to continue in business; 2) history of prior violations; 3) degree of culpability; and 4) such other factors as justice may require, which include: no known risk of exposure, the violator’s attitude, consideration of supplemental environmental projects,

audit policy, voluntary disclosure, size of business, adjustment for small independent owners and lessors, and the economic benefit of noncompliance.

B. Calculation of Rose Penalty

By letter dated June 21, 2010, EPA advised Respondent that it was planning to file a civil administrative complaint against Respondent for alleged violations of Section 1018, and that Section 1018 authorizes the assessment of a civil administrative penalty. (CX-3) EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the Complaint. EPA also asked that, if Respondent believed there were financial factors that bore on Respondent's ability to pay a civil penalty, Respondent submit specific financial documents.

In September of 2010, Respondent provided EPA with executed U.S. Corporate Income Tax Returns for tax years 2007, 2008, and 2009. (CX-9-11). On March 11, 2011, EPA filed a Complaint in this action against Rose for violations of Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5); Section 409 of TSCA, 15 U.S.C. § 2689; and 40 C.F.R. § 745.113(b)(1), 745.113(b)(2), 745.113(b)(3), 745.113(b)(4), and 745.113(b)(6), in two contracts to lease target housing at 1420 Addington Road, Toledo, Ohio: (1) a June 1, 2007 lease; and (2) June 7, 2009 lease. On July 21, 2011, Complainant filed a Motion for Leave to Withdraw the five counts arising from the June 1, 2007 lease for 1420 Addington Road, and for Leave to File an Amended Complaint for the five counts which remain for the June 7, 2009 lease for 1420 Addington Road. Thus, Complainant will address only the penalties for the remaining five counts.

1. Gravity-Based Penalty
  - a. Extent
    - i. Counts 1-5

In accordance with the Extent Category Matrix, the lease violations fell into the minor category because there were no children under 18 years of age residing in the 1420 Addington property at the time of the violations. (CX-8).

- b. Circumstances
        - i. Count 1-Failure to Include Lead Warning Statement

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, the Lead Warning Statement before a lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.113(b)(1) and 40 C.F.R. § 745.100 is a Level 2 violation. (CX-4). Respondent failed to include, within or as an attachment to the June 7, 2009 contract to lease the 1420 Addington property, the Lead Warning Statement before the lessee was obligated under the contract.

Under the Gravity-Based Penalty Matrix, Level 2 circumstance violations that occur after January 12, 2009, incur a penalty of \$15,000 (major extent), \$9,675 (significant extent), or \$2,325 (minor extent). (CX-8). The “extent” determinations made by EPA for these counts are explained above. After the correct matrix cell was applied for each of this count, EPA calculated a proposed gravity-based penalty for Count 1 of \$2,325. (See CX-2 for the worksheet prepared by EPA to calculate the penalty for these counts).

- ii. Count 2-Failure to Include Statement Disclosing Presence or Lack of Knowledge of Lead-Based Paint

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in target housing or lack of knowledge of such

presence before the lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.100 is a Level 3 violation. (CX-4). As explained at length above, Respondent failed to include, within or as an attachment to the June 7, 2009 contract to lease the 1420 Addington property, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in target housing or lack of knowledge of such presence before the lessee became obligated under the contract.

Under the Gravity-Based Penalty Matrix, Level 3 circumstance violations that occur after January 12, 2009, incur a penalty of \$11,600 (major extent), \$7,740 (significant extent), or \$1,155 (minor extent). (CX-8). The “extent” determinations made by EPA for these counts are explained above. After the correct matrix cell was applied for each of this count, EPA calculated a proposed gravity-based penalty for Count 2 of \$1,155. (CX-2).

iii. Count 3-Failure to List Records or Reports

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead based paint hazards in the target housing or a statement that no such records exist before a lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.113(b)(3) and 40 C.F.R. § 745.100 is a Level 5 violation. (CX-4). As explained at length above, Respondent failed to include, within or as an attachment to the June 7, 2009 contract to lease the 1420 Addington property, a list of any records or reports available to Respondent regarding lead-based paint and/or lead based paint hazards in the target housing or a statement that no such records existed before the lessee was obligated under the contract.

Under the Gravity-Based Penalty Matrix, Level 5 circumstance violations that occur after January 12, 2009, incur a penalty of \$3,870 (major extent), \$2,520 (significant extent), or \$390 (minor extent). (CX-8). The “extent” determinations made by EPA for these counts are explained above. After the correct matrix cell was applied for each of this count, EPA calculated a proposed gravity-based penalty for Count 3 of \$390. (CX-2).

iv. Count 4-Failure to Include Lessee’s Affirmation of Receipt

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet before a lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.114(b)(4) and 40 C.F.R. § 745.100 is a Level 4 violation. (CX-4). As explained at length above, Respondent failed to include, within or as an attachment to the June 7, 2009 contract to lease the 1420 Addington property, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet before the lessee was obligated under the contract.

Under the Gravity-Based Penalty Matrix, Level 4 circumstance violations that occur after January 12, 2009, incur a penalty of \$7,700 (major extent), \$4,830 (significant extent), or \$780 (minor extent). (CX-8). The “extent” determinations made by EPA for these counts are explained above. After the correct matrix cell was applied for this count, EPA calculated a proposed gravity-based penalty for Count 4 of \$780. (CX-2).

v. Count 5-Failure to Include Certifying Signatures

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before the lessee is obligated under a contract to lease target housing as required by 40 C.F.R. § 745.113(b)(6) and 40 C.F.R. § 745.100 is a Level 6 violation. (CX-4). As explained at length above, Respondent failed to include, within or as an attachment to the June 7, 2009 contract to lease the 1420 Addington property, the signatures of Respondent and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of such signature before the lessee was obligated under the contract.

Under the Gravity-Based Penalty Matrix, Level 6 circumstance violations that occur after January 12, 2009, incur a penalty of \$1,940 (major extent), \$960 (significant extent), or \$200 (minor extent). (CX-8). The “extent” determinations made by EPA for these counts are explained above. After the correct matrix cell was applied for each this count, EPA calculated a proposed gravity-based penalty for Count 5 of \$200. (CX-2).

2. Total Initial Gravity-Based Penalty

EPA calculated the total initial gravity-based penalty by adding together the five subtotal gravity-based penalties for the five counts (\$2,325 + \$1,155 + \$390 + \$780 + \$200). The initial gravity-based penalty is \$4,850.

3. Statutory Adjustment Factors  
a. Ability to Pay/Continue in Business

As noted above, on June 21, 2010, EPA issued a prefiling notice letter to Respondent informing Respondent that EPA was prepared to file a civil administrative penalty complaint against him for alleged violations of the Section 1018 requirements. The prefiling notice letter also extended an opportunity to Respondent to advise EPA of any factors that he believed EPA should consider before filing a complaint. The prefiling notice letter specifically asked Respondent to provide financial information if Respondent believed he would have an inability to pay a penalty, and advised Respondent to submit such information within ten days of his receipt of the notice, and enclosed a “Financial Statement for Individual Form” for Respondent to complete if it claimed an inability to pay. The prefiling notice letter also asked Respondent to fill out a “Request for Transcript of Tax Return Form (IRS Form 4506-T)” and return it to EPA. (CX-3).

While Complainant received some financial information from Respondent before filing the Complaint, Respondent did not fill out either of the required forms prior to EPA’s filing of the Complaint on March 11, 2011. Thus, EPA was unable to rebut the conclusion that Respondent owns substantial assets in the form of residential rental property. Accordingly, Complainant did not adjust the initial gravity-based penalty based on Respondent’s ability to pay.<sup>1</sup>

b. History of Prior Such Violations

EPA has no information regarding prior violations of Section 1018 by Respondent. Accordingly, EPA did not increase the initial gravity-based penalty for a history of prior such

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<sup>1</sup>Respondent recently forwarded EPA further information concerning its financial ability to pay a penalty, which EPA must analyze. Should this information demonstrate that Respondent does not have the financial means to pay a

violations.

c. Degree of Culpability

The Penalty Policy provides for a 25 percent increase in penalty for an intentional violation of Section 1018, or a violation where the violator has previously received a Notice of Noncompliance (NON) for Section 1018 or Disclosure Rule violations. EPA has no information that Respondent's violations were intentional or that Respondent had previously received a NON. EPA has not increased the initial gravity-based penalty for culpability.

d. Other Factors as Justice May Require

i. No Known Risk of Exposure

Under the Penalty Policy, EPA will adjust a proposed penalty down 80 percent if the Respondent provides EPA with appropriate documentation that the target housing is certified to be lead-based paint free by a certified inspector. Respondent has not provided any documentation to certify that the properties at issue in this matter are certified lead-based paint free. EPA did not adjust the penalty downward based on no known risk of exposure.

ii. Attitude

Under the Penalty Policy, EPA may reduce the proposed penalty by up to 30 percent based on a Respondent's cooperation, immediate good faith efforts to comply, and timely efforts to settle the case. EPA does not believe a reduction of the proposed penalty is appropriate based on these factors and, therefore, has not adjusted the initial gravity-based penalty downward.

iii. Supplemental Environmental Projects (SEPs)

Respondent has not agreed to perform a SEP.

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\$4,850 penalty, EPA will file an Amended pre-hearing exchange detailing its conclusion.

iv. Audit Policy

Respondent did not disclose its violations of Section 1018 under EPA's Audit Policy, "Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations," 60 Fed. Reg. 66706 (December 22, 1995). Therefore, EPA made no adjustment to the initial gravity-based penalty based on this factor.

v. Voluntary Disclosure

The Penalty Policy provides that a violator who self-discloses a violation of Section 1018, but not under the Audit Policy, may still receive a reduction in penalty for such a voluntary disclosure. Respondent did not disclose its violations of Section 1018. Therefore, EPA made no adjustment to the initial gravity-based penalty based on this factor.

vi. Size of Business

A violator may request assistance under EPA's *Policy on Compliance Incentives for Small Businesses* (Small Business Policy). The Small Business Policy provides for the elimination of penalties if a small business meets its four qualifying criteria and agrees to participate in the compliance assistance program or conducts a voluntary self-audit. Respondent has not sought assistance under the Small Business Policy. Therefore, EPA made no adjustment to the proposed penalty based on this factor.

vii. Adjustment for Small Independent Owners and Lessors

Under the Penalty Policy, EPA will adjust a penalty down by 50 percent for individuals who own one target housing unit for lease or one target housing unit that is "for sale by owner." Respondent is the owner of multiple residential rental properties in Toledo, Ohio. Accordingly, EPA made no adjustment to the initial gravity-based penalty based on this factor.

viii. Economic Benefit of Noncompliance

EPA believes the proposed penalty captures any economic benefit to Respondent from its noncompliance with Section 1018.

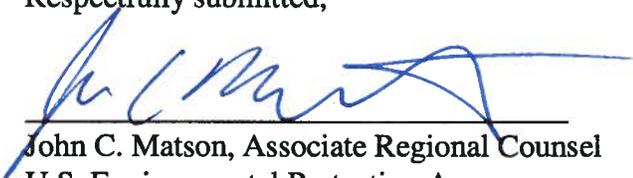
4. Total Proposed Penalty

In summary, EPA did not increase or decrease the initial gravity-based penalty based on any of the statutory adjustment factors. EPA proposed a \$4,850 penalty in the Complaint.

**VII. Provide Copies of Penalty Policies or Guidelines**

A copy of the relevant penalty policy is included in the Prehearing Exchange as Complainant's Exhibit 4.

Respectfully submitted,



John C. Matson, Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5 (C-14J)  
77 West Jackson Blvd.  
Chicago, IL 60604  
Telephone: (312) 886-6829  
Facsimile: (312) 886-0747

***In re Rose Real Estate, Inc.***  
**Docket No. TSCA-05-2011-0004**

REGIONAL HEARING CLERK  
U.S. EPA REGION 5

2011 JUL 21 PM 1:53

**CERTIFICATE OF SERVICE**

I, Nina Johnson certify that I filed the original of Complainant's Initial Prehearing Exchange and attachments with EPA Region 5's Regional Hearing Clerk on July 21, 2011. I also delivered a true and accurate copy on that date, in the following manner to the addresses listed below:

Pouch mail and Fax (without attachments): The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mailcode: 1900 L  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Copy by Certified Mail: Rose Real Estate, Inc.  
Rev. Floyd Rose  
c/o Serenity Christian  
1619 North Lee Street  
Valdosta, Georgia 31602

7-21-11  
Date

  
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**ATTACHMENT A**  
**COMPLAINANT'S EXHIBITS**

- CX-1: June 7, 2009 Lease for 1420 Addington Road, Toledo, Ohio
- CX-2: EPA's Penalty Calculation
- CX-3: June 21, 2010 Pre-filing Notice Letter
- CX-4: EPA's December 2007 *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy*
- CX-5: EPA's *Guidelines for the Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59770 (September 10, 1980)
- CX-6: EPA's *Civil Monetary Penalty Inflation Adjustment Rule*, 73 Fed. Reg. 75,340 (December 11, 2008)
- CX-7: *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)*
- CX-8: Extent Category Matrix for Violations after January 12, 2009
- CX-9: Rose Real Estate Inc.'s U.S. Corporate Income Tax Returns for tax year 2007
- CX-10: Rose Real Estate Inc.'s U.S. Corporate Income Tax Returns for tax year 2008
- CX-11: Rose Real Estate Inc.'s U.S. Corporate Income Tax Returns for tax year 2009
- CX-12: EPA's Report of the August 18, 2008 Inspection of Rose Real Estate Properties, Inc.
- CX-13: Lucas County Assessor Data for Parcel No. 05-05117 at 1420 Addington Road, Toledo, Ohio