



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 11 2008

REPLY TO THE ATTENTION OF:

L-8J

By Personal Service

David Cohen
Registered Agent for:
Harry Cohen Company, Inc.
4105 Commerce
Commerce Twp., Michigan 48382

Re: In the Matter of David Cohen and Harry Cohen Company, Inc.
Docket No: *TSCA-05-2008-002/22*

Dear Mr. Cohen:

I have enclosed a complaint filed by the United States Environmental Protection Agency (U.S. EPA), Region 5 against David Cohen, and Harry Cohen Company, Inc. (you), under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seq.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact me or Mary McAuliffe, Associate Regional Counsel, at (312) 886-6237.

Sincerely,

Margaret M. Guerriero
for Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

cc: Sanford Schulman, Attorney

RECEIVED
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
DAVID COHEN and)
HARRY COHEN COMPANY, INC.)
)
Respondents.)
_____)

Docket No. TSCA-05-2008-002122,

Proceeding to Assess a Civil Penalty Under
Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

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Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondents are David Cohen and Harry Cohen Company, Inc., with a registered office at 4105 Commerce, Commerce Twp., Michigan and a mailing address at P.O. Box 2151, Farmington Hills, Michigan.

Statutory and Regulatory Background

4. In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key

components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and sales. 42 U.S.C. § 4852d (Section 1018) requires the Administrator and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. On March 6, 1996, U.S. EPA and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with Subpart F by September 6, 1996 pursuant to 40 C.F.R. § 745.102(a).

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which impose certain requirements on the sale or lease of target housing.

7. 40 C.F.R. § 745.103 defines target housing as 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.

8. 40 C.F.R. § 745.103 defines "lessor" as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and nonprofit organizations.

9. 40 C.F.R. § 745.103 defines "lessee" as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

11. 40 C.F.R. § 745.103 defines “seller” as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

12. 40 C.F.R. § 745.103 defines “purchaser” as an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

13. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor complete the disclosure activities specified in 40 C.F.R. § 745.107 before a lessee is obligated under any contract to lease target housing.

14. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include as an attachment or within the contract a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

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

General Allegations

16. Paragraphs 1 through 15 are realleged and incorporated here by reference.

17. At some time between May 1, 2000, and February 12, 2006, Respondent David Cohen owned the residential, rental building at 8070 E. Hildale, Detroit, Michigan (Rental Building).

18. The Rental Building was constructed prior to 1978.

19. The Rental Building and each apartment unit within the Rental Building are “target housing” as defined in 40 C.F.R. § 745.103.

20. In August of 2002, a representative of the U.S. EPA contacted Harry Cohen by phone to make an appointment for U.S. EPA and HUD to visit Harry Cohen Company Inc.’s place of business in order to monitor compliance with Section 1018 and its implementing regulations at 40 C.F.R. Part 745, Subpart F. During this phone conversation, Harry Cohen referred the matter of an inspection to his attorney, Sanford A. Schulman.

21. U.S. EPA subsequently spoke with Attorney Schulman by phone and requested an appointment to conduct the compliance monitoring inspection. U.S. EPA never received a return call from Harry Cohen or Attorney Schulman confirming an inspection

22. On September 18, 2002, HUD attempted to contact Attorney Schulman by phone. HUD left a message for Attorney Schulman requesting a call in return. HUD's call was never returned.

23. In March of 2003, HUD left another phone message for Harry Cohen requesting an appointment for the inspection. This call was not returned.

24. On July 18, 2003, Complainant issued an administrative subpoena to Harry Cohen, under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all rental agreements and lead-based paint disclosure documentation for rental transactions at Rental Buildings owned and/or managed by Harry Cohen from May 1, 2000, to the present date.

25. On September 23, 2003, Respondents' Attorney provided Complainant with documents responsive to the TSCA administrative subpoena referenced in paragraph 24, above, including information identifying Respondent David Cohen as the owner of the Rental Buildings and an affidavit signed by Respondent David Cohen attesting to the truth, completeness, and accuracy of the information provided.

26. On January 27, 2006, Complainant issued an administrative subpoena to Harry Cohen under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all sales agreements and rental agreements and lead-based paint disclosure documentation for all sales and any rental transactions not previously provided for Rental Buildings owned and/or managed by Harry Cohen from January 1, 2001, to the present date.

27. On March 9, 2006, Complaint mailed a certified letter to Attorney Sanford A. Schulman regarding Harry Cohen's failure to respond to the January 27, 2006, TSCA administrative subpoena referenced in paragraph 26, above.

28. On March 10, 2006, Respondents' Attorney provided Complainant with documents responsive to the TSCA administrative subpoena referenced in paragraph 27, above, including information identifying Respondent Harry Cohen Company, Inc. as the owner of the Rental Buildings and an affidavit signed by Respondent David Cohen attesting to the truth, completeness, and accuracy of the information provided.

29. On August 18, 2003, Respondents entered into a written lease agreement (contract) with an individual for the lease of an apartment in a Residential Building at 8070 E. Hildale, Upper Rear, Detroit, Michigan (Rental Building)

30. The contract referenced in paragraph 29, above, covered a term of occupancy greater than 100-days.

31. Between July 5, 1984 and August 18, 2003, Respondents, as the owners of the Rental Building, offered for lease an apartment within their Rental Building and an individual entered into a contract on the date listed in paragraph 29, above, to lease an apartment within the Rental Building.

32. On August 15, 1996, the Detroit Department of Health conducted an inspection at 8070 E. Hildale, Detroit, Michigan, which identified violations of the State of Michigan and City of Detroit Health and Safety Codes for lead-based paint hazards.

33. By letter, the Detroit Health Department directed Harry Cohen to address lead-based paint hazards found during the August 15, 1996, inspection on interior walls and ceilings and exterior front and rear porches.

34. Porches are common areas as defined at 40 C.F.R. § 745.103.

35. Respondents are “lessors”, as defined by 40 C.F.R. § 745.103, since they have offered the target housing referenced in paragraph 29, above, for lease.

36. The individual who signed a lease to pay rent in exchange for occupancy of an apartment within the Rental Building, referenced in paragraph 29, above, became a “lessee” as defined in 40 C.F.R. § 745.103, since they entered into an agreement to lease target housing.

37. On March 2, 2005, Respondents entered into the following written sales agreement (contract) with an individual for the sale of the Residential Building at 8070 Hildale Street, Detroit, Michigan.

38. Respondents’ Residential Dwelling referenced in paragraph 37, above, was constructed prior to 1978.

39. Respondents’ Residential Dwelling referenced in paragraph 37, above, is “target housing” as defined in 40 C.F.R. § 745.103.

40. Prior to the date of sale referenced in paragraph 37, above, Respondents were the owners and/or held legal title to the Residential Dwelling, as referenced in paragraph 37, above.

41. As a result of the contract to sell the Residential Dwelling, referenced in paragraphs 37 and 40, above, Respondents became a “seller” as defined in 40 C.F.R. § 745.103.

42. As a result of the contact to sell, the individual who entered into an agreement to purchase the Residential Dwelling referenced in paragraph 37, above, became a “purchaser” as defined in 40 C.F.R. § 745.103.

43. By certified letter dated May 30, 2008, U.S. EPA attempted to advise Respondents that U.S. EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes U.S. EPA to assess a civil

administrative penalty. In that letter, U.S. EPA asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint. If a Respondent believed there were financial factors which bore on either Respondent's ability to pay a civil penalty, U.S. EPA's letter asked Respondents to submit specific financial documents. This letter was sent by certified mail with a return receipt, addressed to David Cohen, Registered Agent for the Harry Cohen Company, Inc. The United States post office returned the May 30, 2008 letter to U.S. EPA marked "refused", indicating that Registered Agent David Cohen refused receipt of U.S. EPA's certified letter. On August 8, 2008, U.S. EPA sent a second letter to Respondents enclosing a copy of U.S. EPA's May 30, 2008 letter. To date, Respondents have provided no response to U.S. EPA's letters.

44. The Director of the Land and Chemicals Division, U.S. EPA, Region 5, has determined that Respondents have violated the federal regulations regarding the disclosure of lead-based paint and/or lead based paint hazards, 40 C.F.R. Part 745, as described below, and thereby violated Section 409 of TSCA, 15 U.S.C. § 2689.

Failure to Disclose in Rental Transactions

Count 1

45. Paragraphs 1 through 44, above, are realleged and incorporated here by reference.

46. 40 C.F.R. § 745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing either the presence

of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before a lessee is obligated under the contract to lease target housing.

47. Count 1: Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing the presence of any known lead-based paint and lead-based paint hazards in the target housing, including the information referenced in paragraphs 33 and 46, above, before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.

48. Respondents' failure to include, either within each contract or as an attachment to each contract, a statement disclosing either the presence of any known lead-based paint and lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee was obligated under the contract for the leasing transaction referenced in paragraph 47, above, constitutes a violation of 40 C.F.R. § 745.113(b)(2), of 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA.

Count 2

49. Paragraphs 1 through 44, above, are realleged and incorporated here by reference.

50. 40 C.F.R. § 745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a

statement that no such records exist before a lessee is obligated under the contract to lease target housing.

51. Count 2: Respondents failed to include, either within the contract or as an attachment to the contract, 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, including the letter referenced in paragraph 33, above, before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.

52. Respondents' failure to include, either within each contract or as an attachment to each contract, 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 the lessee was obligated under the contract for the leasing transaction referenced in paragraph 51, above, constitutes a violation of 40 C.F.R. § 745.113(b)(3), of 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA.

Counts 3

53. Paragraphs 1 through 44, above, are realleged and incorporated here by reference.

54. 40 C.F.R. § 745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the/each contract to lease target housing.

55. Count 3: Respondents failed to include, either within the contract or as an attachment to the contract, 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 before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.

56. Respondents' failure to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet before the lessee was obligated under the contract for the leasing transaction referenced in paragraph 55, above, constitutes a violation of 40 C.F.R § 745.113(b)(4), of 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA.

Counts 4

57. Paragraphs 1 through 44, above, are realleged and incorporated here by reference.

58. 40 C.F.R. § 745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract 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 a lessee is obligated under the contract to lease target housing.

59. Count 4: Respondents failed to include, either within the contract or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of

their statements or the dates of such signature before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.

60. Respondents' failure to include, either within each contract or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the dates of such signature before the lessees were obligated under the contract for the leasing transaction referenced in paragraph 59, above, constitutes a violation of 40 C.F.R. § 745.113(b)(6), of 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA.

Failure to Disclose in Sales Transactions

Count 5

61. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

62. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(a)(2) requires a seller to include in an attachment to each contract to sell target housing a statement by the seller 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.

63. Count 5: Respondents failed to include a statement by the seller 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 in an attachment to the sales contract for 8070 Hildale Street, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 37, above.

64. Respondents' failure to include a statement by the seller 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 in an attachment to the contract to sell target housing, as referenced in paragraph 63, above, constitutes a violation of 40 C.F.R. § 745.113(a)(2), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

65. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

66. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(a)(3) requires a seller to include in an attachment to each contract to sell target housing a list of any records or reports, available to the seller regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist.

67. Counts 6: Respondents failed to include a list of any records or reports, available to the seller regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the sales contract for 8070 Hildale Street, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 37, above.

68. Respondents' failure to include a list of any records or reports, available to the seller regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the contract to sell target housing, as referenced in

paragraph 67, above, constitutes a violations of 40 C.F.R. §745.113(a)(3), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7

69. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

70. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(a)(4) requires the seller to include in an attachment to each contract to sell target housing a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696.

71. Count 7: Respondents failed to include a statement from the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696 in an attachment to the sales contract for 8070 Hildale Street, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 37, above.

72. Respondents' failure to include a statement from the purchaser affirming receipt of the information set out in 40 C.F.R. § 113(a)(2) and (3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696 in an attachment to the contract to sell target housing, as referenced in paragraph 71, above, constitutes a violations of 40 C.F.R § 745.113(a)(4), 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA, 15 U.S.C. § 2689.

Count 8

73. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

74. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(a)(7) requires the seller to include in an attachment to each contract to sell target housing the signatures of the seller, agent, and the purchaser certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

75. Count 8: Respondents failed to include the signatures of the seller, agent, and the purchaser certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the sales contract for 8070 Hildale Street, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 37, above.

76. Respondents' failure to include the signatures of the seller, agent, and the purchaser certifying to the accuracy of their statements along with the dates of such signatures, required by 40 C.F.R. § 745.113(a)(7) in an attachment to the contract to sell target housing, as referenced in paragraph 75, above, constitutes a violation of 42 U.S.C. § 4852d(b)(5) and of Section 409 of TSCA, 15 U.S.C. § 2689.

Proposed Civil Penalty

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. Part 745, Subpart F, authorize the Administrator of U.S. EPA to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of TSCA Section 409. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701,

U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997 (62 Fed. Reg. 35038) (1997). In determining the amount of any civil penalty, Section 16 of TSCA requires U.S. EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

The U.S. EPA calculates penalties by applying its Section 1018 - Disclosure Rule Enforcement Response Policy dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondents have taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

As stated in paragraph 43, above, by certified letter dated May 30, 2008, U.S. EPA attempted to advise Respondents that U.S. EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018

authorizes U.S. EPA to assess a civil administrative penalty. In that letter, U.S. EPA asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint. If a Respondent believed there were financial factors which bore on either Respondent's ability to pay a civil penalty, U.S. EPA's letter asked Respondents to submit specific financial documents. This letter was sent by certified mail with a return receipt, addressed to David Cohen, Registered Agent for the Harry Cohen Company, Inc. The United States post office returned the May 30, 2008 letter to U.S. EPA marked "refused", indicating that Registered Agent David Cohen refused receipt of U.S. EPA's certified letter. On August 8, 2008, U.S. EPA sent a second letter to Respondents enclosing a copy of U.S. EPA's May 30, 2008 letter. To date, Respondents have provided no response to U.S. EPA's letters.

Based upon an evaluation of the facts alleged in this complaint, the statutory factors enumerated above, and the Response Policy, Complainant proposes that the Administrator assess the following civil penalties against Respondents for the violations alleged in this complaint:

Count 1

42 U.S.C. § 4852d(b)(5)	
40 C.F.R. § 745.113(b)(2)	\$4,400

Count 2

42 U.S.C. § 4852d(b)(5)	
40 C.F.R. § 745.113(b)(3)	\$1,430

Count 3

42 U.S.C. § 4852d(b)(5)	
40 C.F.R. § 745.113(b)(4)	\$2,750

Count 4

42 U.S.C. § 4852d(b)(5)	
40 C.F.R. § 745.113(b)(6)	\$550

Count 5

42 U.S.C. § 4852d(b)(5)
40 C.F.R. § 745.113(a)(2)\$770

Count 6

42 U.S.C. § 4852d(b)(5)
40 C.F.R. § 745.113(a)(3)\$260

Count 7

42 U.S.C. § 4852d(b)(5)
40 C.F.R. § 745.113(a)(4)\$520

Count 8

42 U.S.C. § 4852d(b)(5)
40 C.F.R. § 745.113(a)(7)\$130

Proposed Gravity-Based Penalty..... \$10,810

Rules Governing This Proceeding

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) at 40 C.F.R. Part 22 govern this civil administrative penalty proceeding. Enclosed with the complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

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

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondents must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Mary McAuliffe to receive any answer and subsequent legal documents that Respondents serve in this proceeding. You may telephone Ms. McAuliffe at (312) 886-6237. Her address is:

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

Penalty Payment

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

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

Respondents must include the case name and docket number on the check and in the letter transmitting the check. Respondents simultaneously must send copies of the check and transmittal letter to Mary McAuliffe and to:

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

Opportunity to Request a Hearing

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondents have the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondents must specifically make the request in their answer, as described below.

Answer

Respondents must file a written answer to this complaint if Respondents contest any material fact of the complaint; contend that the proposed penalty is inappropriate; or contend that they are entitled to judgment as a matter of law. To file an answer, Respondents must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above, and must serve copies of the written answer on the other parties. If Respondents choose to file a written answer to the complaint, in accordance with Section 22.14(c) of the Consolidated Rules, they must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

Respondents' written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint or must state clearly that Respondents have no knowledge of a particular factual allegation. Where Respondents state that they have no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation. Respondents' answer must also state:

- a. the circumstances or arguments which Respondents allege constitute grounds of defense;
- b. the facts that Respondents dispute;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondents request a hearing.

If Respondents do not file a written answer within 30-calendar-days after receiving this complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondents constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations.

Respondents must pay any penalty assessed in a default order without further proceedings 30-days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To

request an informal settlement conference, Respondents may contact Mary McAuliffe at the address provided above.

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

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondents' continuing obligation to comply with TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

The U.S. EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Consent Order.

By: *Allen Nelson*
for Margaret M. Gueriero, Director
Land and Chemicals Division

Dated *8/11/08*

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US EPA REGION V
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