



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

RECEIVED

MAR 27 2012

EPA ORG
Office of Regional Hearing Cle

Steven C. Schlang
Enforcement Counsel
617-918-1773 (phone)
617-918-1809 (fax)

March 27, 2012

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

Re: In the Matter of: Juan Hernandez
Docket Number: RCRA-01-2012-0029

Dear Ms. Santiago,

Please find enclosed for filing an original and one copy of an Administrative Complaint regarding the above-matter.

Please do not hesitate to contact me should you have any questions regarding the enclosed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steven C. Schlang", with a large, stylized flourish at the end.

Steven C. Schlang

cc: Ronnie Levin
Juan Hernandez.

In the Matter of: Juan Hernandez
Docket No. TSCA-01-2012-0029

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for Hearing has been provided to the following persons on the date noted below:

Original and one copy,
hand-delivered:

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

One copy (with the Consolidated
Rules and Penalty Policy), by First
Class Mail, Return Receipt
Requested:

Juan Hernandez
585 E. Main Street
Bridgeport, CT 06608

Dated: 3/27/12



Steven Schlang

Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-4)
Boston, Massachusetts 02109-3912
Phone : 617-918-1773
Fax: 617-918-0773

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF:)	
)	
JUAN HERNANDEZ)	Docket No. TSCA-01-2012-0029
585 East Main Street)	
Bridgeport, Connecticut 06608)	
)	
Respondent.)	
)	

**COMPLAINT AND NOTICE OF OPPORTUNITY
FOR ADMINISTRATIVE HEARING**

I. STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for Administrative 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. The 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 Respondent in this action, Juan Hernandez, is hereby notified of the Legal Enforcement Manager’s determination that Respondent has violated TSCA Section 409, 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 federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, set forth in 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Complainant seeks

civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409 are subject to the assessment by Complainant of civil and/or criminal penalties. In support of its Complaint, Complainant alleges the following:

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, the United States Environmental Protection Agency (“EPA”) promulgated regulations to implement the Act. These regulations, the Disclosure Rule, are set forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to TSCA Section 401(17), 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, or any 0-bedroom dwelling.

6. The Disclosure Rule requires lessors of target housing to, among other things:

a. provide to lessees a lead hazard information pamphlet (such as the pamphlet titled

Protect Your Family From Lead in Your Home);

b. disclose to lessees the presence of any known lead-based paint and/or lead-based paint

hazards;

c. provide lessees 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, including common areas and records and reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation of lead-based paint and/or lead-based paint hazards in the target housing as a whole;

d. include as an attachment, or within the contract to lease target housing, a Lead Warning Statement;

e. provide a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards or lack of knowledge thereof; and

f. include in each contract to lease target housing a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing.

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), failure to comply with the requirements of the Disclosure Rule is a violation of TSCA Section 409.

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

9. 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.

IV. GENERAL ALLEGATIONS

10. Respondent, Juan Hernandez, is an individual who resides in Bridgeport, Connecticut.

11. At all times relevant to the allegations in this Complaint, Respondent was the “owner,” as defined in 40 C.F.R. § 745.103, of approximately 17 apartment buildings with over 80 residential rental units, including the following properties located in Bridgeport, Connecticut (collectively “Properties”): 800-806 Hallet Street; 357 Nichols Street; 1070-1086 East Main Street; 563-585 East Main Street; 729-731 Stillman Street; and 347-349 Nichols Street.

12. All of the Properties were built before 1978. All of the Properties are or were, at the time of the violations alleged in this Complaint, “target housing,” as defined in 40 C.F.R. § 745.103. None of the rental units in the Properties satisfy the requirements for an exemption to the provisions of the Act or the Disclosure Rule.

13. At all times relevant to the allegations in this Complaint, Respondent offered rental units in the Properties for lease to prospective tenants. Accordingly, Respondent is a “lessor” as defined in 40 C.F.R. § 745.103.

14. On or about April 20, 2010, an authorized EPA representative hand-delivered a TSCA subpoena (TSCA-SP-2010-055) dated April 16, 2010, to Respondent. The subpoena

requested documents and information necessary to assess Respondent's compliance with the Disclosure Rule. Respondent submitted a response to EPA's subpoena on May 5, 2010.

15. On September 23, 2010, an authorized representative from EPA conducted an inspection at Respondent's office, located at 585 East Main Street, Bridgeport Connecticut, to evaluate Respondent's compliance with the Disclosure Rule ("the Inspection").

16. During the Inspection, EPA's representative collected documents and information necessary to evaluate compliance with the Disclosure Rule. Following the Inspection, EPA also obtained documents and information from other sources, including the City of Bridgeport Department of Health, Lead Program ("BDHLP") and the Bridgeport Housing Authority.

17. Among other documents, EPA obtained records and reports that documented the presence of lead-based paint and/or lead-based paint hazards at the Properties and identified the location of lead-based paint and/or lead-based paint hazards in and around the Properties. EPA also obtained documents from the City of Bridgeport Department of Health, Lead Program ("BDHLP") that provided additional information about lead-based paint and/or lead-based paint hazards identified at the Properties, including:

- a. Lead Paint Inspection Report, prepared by Earl Coleman, Jr./Jennifer Frazier, dated February 9, 2007, regarding 357 Nichols St., Apartment 3rd Floor Right;
- b. Lead Inspection Result Sheet, prepared by BDHLP, dated January 3, 2005, regarding 1074 East Main St., Apartment 3rd Floor Left;
- c. Certificate of Apartment Occupancy/Contaminated Dwelling Order Letter, prepared by BDHLP, dated April 8, 2008, regarding 349 Nichols St., 1st Floor; and

d. Certificate of Apartment Occupancy/Contaminated Dwelling Order Letter, prepared by BDHLP; Lead Inspection Results Sheet, prepared by BDHLP; Lead Paint Inspection Report, prepared by Earl Coleman, Jr., dated May 22, 2003; and letter regarding dust sample results, prepared by BDHLP, dated June 25, 2003, regarding 565 East Main Street, Apartment 3rd Floor.

V. VIOLATIONS

18. EPA identified the following violations of the Act and the Disclosure Rule based on documents and information obtained from Respondent during the September 2010 Inspection and/or otherwise collected during EPA's investigation of this matter:

COUNT 1

Failure to Provide a Lead Hazard Information Pamphlet to Lessees

19. Paragraphs 1 through 18 above are incorporated by reference as if fully set forth herein.

20. Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor is required to provide a lessee, before the lessee is obligated under any contract to lease target housing, with an EPA-approved lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet that has been approved by EPA for use in the state where such target housing is located.

21. Respondent failed to provide an EPA-approved lead hazard information pamphlet to the following tenants who entered into contracts to lease residential dwelling units in the Properties identified below, before the tenants became obligated to lease the target housing:

a. A tenant who entered into a contract to lease 357 Nichols Street, Apartment 3rd Floor

Right, beginning on or about June 24, 2008;

b. A tenant who entered into a contract to lease 729 Stillman Street, beginning on or about August 15, 2008;

c. A tenant who entered into a contract to lease 583 East Main Street, Apartment 2nd Floor Center, beginning on or about September 25, 2008;

d. A tenant who entered into a contract to lease 1074 East Main Street, Apartment 3rd Floor Left, beginning on or about July 1, 2009;

e. A tenant who entered into a contract to lease 802 Hallet Street, Apartment 3rd Floor Right, beginning on or about September 1, 2009;

f. A tenant who entered into a contract to lease 349 Nichols Street, Apartment 2nd Floor, beginning on or about December 15, 2009; and

g. A tenant who entered into a contract to lease 565 East Main Street, 3rd Floor, beginning on or about July 1, 2010.

22. Respondent's failure to provide lessees of target housing with an EPA-approved lead hazard information pamphlet prior to the lessees becoming obligated under a lease contract to lease target housing on seven (7) occasions constitutes seven (7) separate violations of 40 C.F.R. § 745.107(a)(1) and TSCA Section 409.

COUNT 2

Failure to Disclosure the Presence of any Known Lead-Based Paint/Lead-Based Paint Hazards and/or Provide Available Records or Reports to Lessees

23. Paragraphs 1 through 22 above are incorporated by reference as if fully set forth herein.

24. Pursuant to 40 C.F.R. § 745.107(a)(2), a lessor is required to disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing before the lessee becomes obligated under the lease contract. The lessor is also required to

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.

25. Pursuant to 40 C.F.R. § 745.107(a)(4), a lessor is required to provide to the lessee 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 the lease contract. This requirement includes records or reports regarding common areas. The term “available records” includes records in the lessor’s possession or records that are reasonably obtainable by the lessor at the time of the disclosure.

26. Respondent failed to disclose the presence of any known lead-based paint or lead-based paint hazards and/or failed to provide the document referenced in Paragraph 17(a) above to a tenant who entered into a contract to lease 357 Nichols Street, Apartment 3rd Floor Right, beginning on or about June 24, 2008, before the tenant became obligated to lease the target housing.

27. Respondent failed to disclose the presence of any known lead-based paint or lead-based paint hazards and/or failed to provide the document referenced in Paragraph 17(b) above to a tenant who entered into a contract to lease 1074 East Main Street, Apartment 3rd Floor Left, beginning on or about July 1, 2009, before the tenant became obligated to lease the target housing.

28. Respondent failed to disclose the presence of any known lead-based paint or lead-

based paint hazards and/or failed to provide the document referenced in Paragraph 17(c) above to a tenant who entered into a contract to lease 349 Nichols Street, Apartment 2nd Floor, beginning on or about December 15, 2009, before the tenant became obligated to lease the target housing.

29. Respondent failed to disclose the presence of any known lead-based paint or lead-based paint hazards and/or failed to provide the documents referenced in Paragraph 17(d) above to a tenant who entered into a contract to lease 565 East Main Street, Apartment 3rd Floor, beginning on or about July 1, 2010, before the tenant became obligated to lease the target housing.

30. Respondent's failure to disclose the presence of any known lead-based paint or lead-based paint hazards and/or failure to provide records or reports regarding such lead-based paint or lead-based paint hazards to four (4) lessees before the lessees became obligated under a lease contract constitutes four (4) violations of 40 C.F.R. § 745.107(a)(2) and/or 40 C.F.R. § 745.107(a)(4), and TSCA Section 409.

COUNT 3
Failure to Include a Lead Warning Statement

31. Paragraphs 1 through 30 above are incorporated by reference as if fully set forth herein.

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

33. Respondent failed to include the Lead Warning Statement in, or attached to, contracts to lease target housing to tenants who occupied residential dwelling units in the Properties identified below:

- a. A tenant who resided at 357 Nichols Street, Apartment 3rd Floor Right, beginning on or about June 24, 2008;
 - b. A tenant who resided at 729 Stillman Street, beginning on or about August 15, 2008;
 - c. A tenant who resided at 1074 East Main Street, Apartment 3rd Floor Left, beginning on or about July 1, 2009;
 - d. A tenant who resided at 349 Nichols Street, Apartment 2nd Floor, beginning on or about December 15, 2009; and
 - e. A tenant who resided at 565 East Main Street, Apartment 3rd Floor, beginning on or about July 1, 2010.
34. Respondent's failure to include the Lead Warning Statement as an attachment to, or within, five (5) contracts to lease target housing constitutes five (5) separate violations of 40 C.F.R. § 745.113(b)(1) and TSCA Section 409.

COUNT 4

Failure to Include a Statement by the Lessor Disclosing the Presence of Known Lead-Based Paint or Lead-Based Paint Hazards, or Lack of Knowledge Thereof

35. Paragraphs 1 through 34 above are incorporated by reference as if fully set forth herein.
36. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include as an attachment or within the lease 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.
37. Respondent failed to include a statement disclosing the presence of known lead-

based paint and/or lead-based paint hazards in target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in, or attached to, contracts to lease target housing to tenants who occupied residential dwelling units in the Properties identified below:

- a. A tenant who resided at 357 Nichols Street, Apartment 3rd Floor Right, beginning on or about June 24, 2008;
- b. A tenant who resided at 729 Stillman Street beginning on or about August 15, 2008; and
- c. A tenant who resided at 349 Nichols Street, Apartment 2nd Floor beginning on or about December 15, 2009.

40. Respondent's failure to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as an attachment to, or within, three (3) contracts to lease target housing constitutes three (3) separate violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409.

COUNT 5
Failure to Provide a List of Records or Reports to Lessees

41. Paragraphs 1 through 40, above, are incorporated by reference as if fully set forth herein.

42. Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing must include a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint as an attachment to, or within, the contract.

43. Respondent failed to include a list of the records or reports referenced in Paragraph

17 above to the tenants who entered into contracts to lease target housing in the Properties identified below:

- a. A tenant who entered into a contract to lease 802 Hallet Street, Apartment 3rd Floor Right, beginning on or about September 1, 2009;
- b. A tenant who entered into a contract to lease 729 Stillman Street beginning on or about August 15, 2008; and
- c. A tenant who entered into a contract to lease 583 East Main Street, Apartment 2nd Floor Center, beginning on or about September 25, 2008.

44. Respondent's failure to include a list of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards as an attachment to, or within, three (3) contracts to lease target housing constitutes three (3) separate violations of 40 C.F.R. § 745.113(b)(3), and TSCA Section 409, 15 U.S.C. § 2689.

45. The violations alleged in Counts 1 through 5 are prohibited acts under TSCA Section 409 and 40 C.F.R. § 745.118(e) and violations for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act and Section 16 of TSCA.

VI. PROPOSED PENALTY

46. Based upon the violations described in this Complaint, a civil penalty of \$127,150 is hereby proposed to be assessed against Respondent. The proposed civil penalty has been determined in accordance with TSCA Section 16, the provisions of 40 C.F.R. § 745.118(f), as

well as the Debt Collection Improvement Act of 1996¹ and its implementing regulations at 40 C.F.R. Part 19. Under Section 16 of TSCA, Complainant must 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. To calculate the civil penalty proposed herein, Complainant has taken into account the particular facts and circumstances of this case with specific consideration of EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* (the "ERPP"), a copy of which is enclosed with this Complaint. The ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. 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 Respondent establishes a *bona fide* claim of ability to pay or other issues relevant to determining an appropriate penalty.

47. The penalties proposed for violations alleged under each count in this Complaint are:

1. Pub. L. No. 104-134, 110 Stat. 1321 (31 U.S.C. § 3701 note).

In the Matter of: Juan Hernandez
Docket No. TSCA-01-2012-0029

<u>Count</u>	<u>Regulation Violated</u>	<u>Description</u>	<u>Penalty</u>
1	40 C.F.R. § 745.107(a)(1)	Failure to provide lead hazard information pamphlet to lessees	\$49,980
2	40 C.F.R. §§ 745.107(a)(2) and/or 745.107(a)(4)	Failure to disclosure the presence of any known lead-based paint/lead-based paint hazards and/or provide available records or reports to lessees	\$33,940
3	40 C.F.R. § 745.113(b)(1)	Failure to include Lead Warning Statement	\$26,960
4	40 C.F.R. § 745.113(b)(2)	Failure to include in a lease or as an attachment thereto a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof	\$13,560
5	40 C.F.R. § 745.113(b)(3)	Failure to provide list of records and reports to lessees	\$2,710

48. Respondent shall pay the civil penalty with a cashier's or certified check, payable to the Treasurer, United States of America. Respondent shall note on the check the docket number of this enforcement action, namely, EPA Docket No. TSCA-01-2012-0029. The check shall be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

In the Matter of: Juan Hernandez
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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

Steven Schlang
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-4)
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondent need not file an Answer. If Respondent agrees to pay the penalty but need additional time, Respondent may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondent need not file an Answer and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. *See* 40 C.F.R. § 22.18(a).

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

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

50. 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 of the Consolidated Rules of Practice, Respondent has a right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, at 40 C.F.R. Part 22. **A request for a hearing must be incorporated into a written Answer. Respondent must file the original and one copy of the**

In the Matter of: Juan Hernandez
Docket No. TSCA-01-2012-0029

written Answer to this Complaint within thirty (30) days of receipt of this Complaint.

Respondent shall send the Answer 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

Respondent shall serve copies of the Answer, and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Steven Schlang
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-4)
Boston, Massachusetts 02109-3912.

In its Answer, Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of any defense; (2) the facts Respondent disputes; (3) the basis for opposing any proposed relief; and, (4) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

VIII. DEFAULT ORDER

51. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by

Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's 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 Respondent without further proceedings thirty (30) days after the default order becomes final.

IX. SETTLEMENT CONFERENCE

52. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 1.

53. 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. To explore the possibility of settlement in this matter, Respondent should contact Steven Schlang, Senior Enforcement Counsel, Office of Environmental Stewardship, EPA Region 1, at the address cited above or at (617) 918-1773. Mr. Schlang has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.

In the Matter of: Juan Hernandez
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Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEE)
Boston, MA 02114-2023

3/27/12
Date

ATTACHMENT 1 TO COMPLAINT

**In the Matter of Juan Hernandez
Docket Number TSCA-01-2012-0029**

PROPOSED PENALTY SUMMARY

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), EPA proposes a civil penalty in the amount of \$127,150 to be assessed against Juan Hernandez as follows¹:

COUNT 1. Failure to Provide a Lead Hazard Information Pamphlet to Lessees

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees with 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 purchaser or 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 ERPP 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 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. The maximum penalty per violation for violations that occur between July 28, 1997, and January 12, 2009 is \$11,000. See 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. The maximum penalty per violation for violations that occur after January 12, 2009 is \$16,000. See 73 Fed. Reg. 75340-46 (December 11, 2008) and 40 C.F.R. Part 19.

Respondent failed to provide an EPA-approved lead hazard information pamphlet to tenants who entered into the leases for the Properties identified below, before the tenants became obligated to lease target housing:

Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity-Based Penalty
357 Nichols St., Apt. 3 rd Floor Right	6/24/2008	11 & 14 y.o.	Significant	\$6,600
729 Stillman St.	8/15/2008	None	Minor	\$2,200
583 East Main St., Apt. 2 nd Floor Center	9/25/2008	Infant & 1 y.o.	Major	\$11,000
1074 East Main St., Apt. 3 rd Floor Left	7/1/2009	12 y.o.	Significant	\$8,500
802 Hallet St., Apt. 3 rd Floor Right	9/1/2009	None	Minor	\$2,840
349 Nichols St., Apt. 2 nd Floor	12/15/2009	2 & 11 y.o.	Major	\$16,000
565 East Main St., Apt. 3 rd Floor	7/1/2010	None	Minor	\$2,840

COUNT 2. Failure to Disclose the Presence of any Known Lead-Based Paint/Lead-Based Paint Hazards and/or Provide Available Records or Reports to Lessees

Provisions 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 target housing. Lessors are also required to disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards, such as the basis for a determination that lead-based paint and/or lead-based paint hazards exist, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces. 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

Circumstance Level: Failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards represents the greatest deviation from the Section 1018 regulations. A failure to disclose known lead-based paint and/or lead-based paint hazards and/or provide records or reports regarding the presence lead-based paint and/or lead-based paint hazards has a high probability of impairing a lessee’s ability to properly assess and weigh the factors associated with human health risk when leasing target housing and greatly increases the likelihood of exposure to lead-based paint hazards. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(2) and/or a violation of 40 C.F.R. § 745.107(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.

Respondent possessed or had access to the following records and reports: 1) Lead Paint Inspection Report, prepared by Earl Coleman, Jr./Jennifer Frazier, dated February 9, 2007, regarding 357 Nichols St., Apartment 3rd Floor Right; 2) Lead Inspection Result Sheet, prepared by BDHLP, dated January 3, 2005, regarding 1074 East Main St., Apartment 3rd Floor Left; 3) Certificate of Apartment Occupancy/Contaminated Dwelling Order Letter, prepared by BDHLP, dated April 8, 2008, regarding 349 Nichols St., 1st Floor; and, 4) Certificate of Apartment Occupancy/Contaminated Dwelling Order Letter, prepared by BDHLP, Lead Inspection Results Sheet, prepared by BDHLP, and Lead Paint Inspection Report, prepared by Earl Coleman, Jr., dated May 22, 2003, and letter regarding dust sample results, prepared by BDHLP, dated June 25, 2003, regarding 565 East Main Street, Apartment 3rd Floor.

Respondent failed to disclose the presence of any known lead-based paint or lead-based paint hazards and/or failed to provide the documents referenced in the preceding paragraph to tenants who entered into the following leases:

Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity-Based Penalty
357 Nichols St., Apt. 3 rd Floor Right	6/24/2008	11 & 14 y.o.	Significant	\$6,600
1074 East Main St., Apt. 3 rd Floor Left	7/1/2009	12 y.o.	Significant	\$8,500
349 Nichols St., Apt. 2 nd Floor	12/15/2009	2 & 11 y.o.	Major	\$16,000
565 East Main St., Apt. 3 rd Floor	7/1/2010	None	Minor	\$2,840

COUNT 3. Failure to Include a 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 ERPP 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.

Respondent failed to include the Lead Warning Statement in, or attached to, the leases for the Properties identified below:

Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity-Based Penalty
357 Nichols St., Apt. 3 rd Floor Right	6/24/2008	11 & 14 y.o.	Significant	\$5,500
729 Stillman St.	8/15/2008	None	Minor	\$1,320
1074 East Main St., Apt. 3 rd Floor Left	7/1/2009	12 y.o.	Significant	\$7,090
349 Nichols St., Apt. 2 nd Floor	12/15/2009	2 & 11 y.o.	Major	\$11,340
565 East Main St., Apt. 3 rd Floor	7/1/2010	None	Minor	\$1,710

COUNT 4. Failure to Include a Statement by the Lessor Disclosing the Presence of Known Lead-Based Paint or Lead-Based Paint Hazards, or Lack of Knowledge Thereof

Provision Violated: 40 C.F.R. § 745.113(b)(2) requires that each contract to lease target housing include, as an attachment or within the lease contract, a statement by a 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.

Circumstance Level: Failing to include the statement of knowledge of lead-based paint and/or lead-based paint hazards as an attachment, or within the contract to lease target housing, results in a medium probability of impairing the lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in the housing, a violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Disclosure Rule ERPP, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

Extent of Harm: The Disclosure Rule ERPP 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.

Respondent failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in, or attached to, the leases for the Properties identified below:

Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity-Based Penalty
357 Nichols St., Apt. 3 rd Floor Right	6/24/2008	11 & 14 y.o.	Significant	\$4,400
729 Stillman St.	8/15/2008	None	Minor	\$660
349 Nichols St., Apt. 2 nd Floor	12/15/2009	2 & 11 y.o.	Major	\$8,500

COUNT 5. Failure to Provide a List of Records or Reports to Lessees

Provision Violated: Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing must include a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards within, or as an attachment to, the contract.

Circumstance Level: Failure to include a list of any records or reports in a contract to lease target housing has a lesser probability of impairing a lessee’s ability to properly assess and weigh potential health risks when leasing target housing, but could potentially increase the likelihood of exposure to lead-based paint hazards. As a result, under the ERPP, Appendix B, a violation of 40 C.F.R. § 745.113(b)(3) is a *Level 5* violation.

Extent of Harm: The Disclosure Rule ERPP 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. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to include a list of the records or reports referenced under Count 2 above to tenants who entered into the leases for the Properties identified below:

Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity-Based Penalty
729 Stillman St.	8/15/2008	None	Minor	\$220
583 East Main St., Apt. 2 nd Floor Center	9/25/2008	Infant & 1 y.o.	Major	\$2,200
802 Hallet St., Apt. 3 rd Floor Right	9/1/2009	None	Minor	\$290