UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:

Douglas Paulino
240 Walnut Street
Hartford, CT 06120

Respondent.

EPA Docket Number
TSCA-01-2009-0066

INITIAL DECISION AND DEFAULT ORDER

This is a civil administrative proceeding instituted 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 and the Revocation or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") commenced this proceeding on September 28, 2009, by filing a Complaint against Respondent, Douglas Paulino. In its Complaint, EPA alleged that Respondent committed nineteen (19) violations of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 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 ("Disclosure Rule"). EPA's Complaint proposed civil penalties of up to $11,000 per violation against Respondent for the 18 violations which occurred before January 13, 2009, and up to $16,000 for one violation that occurred on February 1, 2009.

In the currently pending Motion for Default Order, the Complainant alleges that Respondent is in default for failure to file an answer to the Complaint, that the Respondent has violated Section 409 of the TSCA, and requests that a penalty of $159,062.50 be assessed against the Respondent.

Based upon the record in this matter and the following Findings of Fact and Conclusions of Law and Penalty Calculation, the Complainant's Motion for Default Order is hereby GRANTED. The Respondent is hereby found to be in default, pursuant to Section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), and a civil penalty in the amount of $159,062.50 is assessed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17(c) and based on the entire record, I make the following findings of fact and conclusions of law:

1. The Complainant is the United States Environmental Protection Agency, Region 1.
2. The Respondent is Douglas Paulino.
3. Complainant filed a Complaint and Notice of Opportunity for Administrative Hearing ("Complaint") on September 28, 2009, in accordance with Rule 22.5 of the Consolidated Rules, 40 C.F.R. § 22.5.
4. Rule 22.7(c) of the Consolidated Rules, 40 C.F.R. § 22.7(c), states that service of a complaint is complete when the return receipt is signed.
5. The Complaint was served on Respondent by first class certified mail. Respondent signed a receipt for delivery on October 6, 2009,which was subsesquently filed with the Regional Hearing Clerk, EPA Region I. Accordingly, I find that service of the Complaint was complete on October 6, 2009.

6. Rule 22.15(c) of the Consolidated Rules, 40 C.F.R. § 22.15(c), states that Respondent has a right to request a hearing, incorporated within a written answer, and must file a response to the Complaint within thirty (30) days of service.

7. Rule 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), states that a party may be found in default upon failure to file a timely answer to the Complaint. Default by Respondent constitutes, for the purpose of the pending action, an admission of all facts alleged in the complaint and a waiver of Respondent's right to contest such factual allegations.

8. To date, Respondent has not filed an answer to the Complaint or a request for extension of time. I conclude that the thirty (30) day period for Respondent to file his answer lapsed on November 5, 2009. I find the Respondent in default for failing to answer the Complaint in this matter.

9. At all times relevant to the Complaint, Respondent owned and offered for lease rental units located at 9-11 Orange Street, Hartford, Connecticut ("9-11 Orange Street") (three-unit apartment building), 12-14[1] Orange Street, Hartford Connecticut ("12-14 Orange Street") (three-unit apartment building). Respondent constitutes an "owner" and a "lessor," as defined in 40 C.F.R. § 745.103.

10. The housing units owned and offered for lease by Respondent, described in paragraph 9 above, were constructed prior to 1978 and constitute "target housing" as defined in 40 C.F.R. § 745.103, and do not qualify for exemptions to the provisions of the Lead Hazard Reduction Act or the Lead Disclosure Rule.

[1] In relevant leases, the addresses do not refer to "9-11 Orange Street" or "12-14 Orange Street," but rather "11 Orange Street," "12 Orange Street," 14 Orange Street." Eleven Orange Street refers to rental units in 9-11 Orange Street; 12 Orange Street and 14 Orange Street refer to rental units in 12-14 Orange Street.

11. On or about August 1, 2006, Respondent entered into a lease contract with Natalie Delgado, a person with two children, aged six years and eight years, to lease 12 Orange Street, 1st Floor.

12. On or about October 1, 2006, Respondent entered into a lease contract with Yaris Sanz, a person with three children under the age of eighteen years, to lease 14 Orange Street, 2nd Floor.

13. On or about October 1, 2006, Respondent entered into a lease contract with Madelin Regas, a person with two children under the age of eighteen years, to lease 14 Orange Street, 3rd Floor.

14. On or about September 1, 2007, Respondent entered into a lease contract with Gladys Melendez, a person who occupied her apartment with one child under the age of six years, to lease 11 Orange Street, 2nd Floor.

15. On or about October 1, 2007, Respondent entered into a lease contract with Felix Colon, a person with two children, aged seven years and nine years, to lease 12 Orange Street, 1st Floor.

16. On or about June 2008, Respondent entered into a lease contract with Marilyn Cotto Rivera, a person with one child under the age of eighteen years, to lease 14 Orange Street, 1st Floor.

17. On or about February 1, 2009, Respondent entered into a lease contract with Blanca Maldonado, a person with four children under the age of eighteen years, to lease 11 Orange Street, 2nd Floor.

18. Forty C.F.R. § 745.107(a)(1) requires a lessor of target housing to provide lessees, before the lessee becomes obligated under any contract to lease target housing, an EPA-

approved lead hazard information pamphlet entitled *Protect Your Family from Lead in Your Home*, or an equivalent pamphlet provided by EPA for use in the state.

19. Respondent failed to provide a copy of the EPA-approved lead hazard pamphlet, *Protect Your Family from Lead in Your Home*, or an EPA-approved equivalent pamphlet, to Natalie Delgado, Yaris Sanz, Madelin Regas, Gladys Melendez, Felix Colon, and Marilyn Cotto before these lessees became obligated under contracts to lease target housing from the Respondent.

20. I conclude that Respondent's failure to provide EPA-approved pamphlets to Natalie Delgado, Yaris Sanz, Madelin Regas, Gladys Melendez, Felix Colon, and Marilyn Cotto constitutes six (6) violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 14 U.S.C. § 2689.

21. Forty C.F.R. § 745.107(a)(2) requires a lessor to disclose to the lessee, before the lessee becomes obligated under any contract to lease target housing, the presence of any known lead-based paint and/or lead based paint hazards in the housing being leased. The lessor is also required to disclose to the lessee any additional information available concerning the 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.

22. Forty C.F.R. § 745.107(a)(4) requires a lessor to provide to the lessee, before the lessee becomes obligated under any contract to lease target housing, 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. The term "available" includes records in lessor's

possession or records that are reasonably obtainable by the lessor at the time of the disclosure.

23. On or about December 9, 2004, the Lead Action for Medicaid Primary Prevention Project ("LAMPP"), Connecticut Children's Medical Center, issued a letter notifying Respondent that a child living in 11 Orange Street, 2nd Floor, had an elevated blood-lead level and that lead-based paint hazards were found to exist at the rental unit ("2004 LAMPP Letter"). Included with the letter was a risk assessment report for lead-based paint hazards conducted by TRC Environmental Corporation entitled *Visual Risk Assessment and Scope of Services to Reduce Potential Lead Hazards* for 11 Orange Street, 2nd Floor ("2004 TRC Report"). The 2004 LAMPP Letter also informed Respondent that the 2004 TRC Report should be disclosed to purchasers and tenants, and that failure to disclose would constitute a violation of the Disclosure Rule resulting in fines of up to $11,000 per violation.

24. The 2004 LAMPP Letter and the 2004 TRC Report state that a risk assessment for lead-based paint hazards was conducted at 11 Orange Street, 2nd Floor, on November 24, 2004. The 2004 LAMPP Report states that all paint observed during the risk assessment was assumed to be lead-based in accordance with LAMPP risk assessment protocols. The 2004 TRC Report states that all bare soil observed during the risk assessment was assumed to be contaminated with lead in accordance with LAMPP risk assessment protocols. The 2004 TRC Report identifies areas of defective paint, paint on friction surfaces and/or paint on impact surfaces that pose a potential lead-based paint exposure hazard. I find that the TRC Report identified "lead-based paint hazards," within the meaning of 40 C.F.R. § 745.103, in the bedrooms, bathroom, hall,

kitchen, and living room of the rental unit known as 11 Orange Street, 2nd Floor. I find that the 2004 TRC Report identified "lead-based hazards" in the front entry foyer, stair/front entry hall, back porch, exterior apartment building, and garage at 11 Orange Street and that these locations are common areas "generally accessible to residents/users" within the meaning of the Disclosure Rule. See 40 C.F.R. § 745.103.

25. I find that the 2004 LAMPP Letter and the 2004 TRC Report support Complainant's allegations that lead-based paint hazards were present in 11 Orange Street, 2nd Floor, and associated common areas, at the time of the lease transaction between Respondent and Gladys Melendez on or around September 1, 2007.

26. I conclude that the 2004 LAMPP Letter and 2004 TRC Report, attached as Exhibit 11 to Complainant's Memorandum in Support of Motion for Default Order ("Complainant's Memorandum"), constitute "records or reports pertaining to lead-based paint or lead-based paint hazards" within the meaning of 40 C.F.R. § 745.107(a)(4) and were "available" to Respondent prior to September 1, 2007.

27. On or about August 21, 2008, the City of Hartford, Connecticut, issued a lead-based paint abatement order regarding 11 Orange Street, 2nd and 3rd Floors ("2008 Hartford Abatement Order"), which required Respondent to abate and manage lead-based paint and notified Respondent of the requirements of the Disclosure Rule. The 2008 Abatement Order notified Respondent of the determination of the existence of toxic levels of lead located at 11 Orange Street, 2nd and 3rd Floors, following an inspection conducted on August 20, 2008. Attached to the 2008 Hartford Abatement Order was a lead inspection report form ("2008 Lead Inspection Form"), specifically identifying where lead-based paint and/or lead-based paint hazards were found.

28. I find that the 2008 Hartford Abatement Order and the 2008 Lead Inspection Form support Complainant's allegation that lead-based paint and/or lead-based paint hazards were present in 11 Orange Street, 2nd Floor, and associated common areas, at the time of the lease transaction between Respondent and Blanca Maldonado on or around February 1, 2009.

29. I conclude that the 2008 Hartford Abatement Order and the 2008 Lead inspection Form, attached as Exhibit 12 to Complainant's Memorandum, constitute "records or reports pertaining to lead-based paint or lead-based paint hazards" within the meaning of 40 C.F.R. § 745.107(a)(4) and were "available" to Respondent prior to February 1, 2009.

30. Respondent did not disclose the presence of known lead-based paint or lead-based paint hazards or provide records or reports pertaining to the presence of lead-based paint or lead based paint hazards for 11 Orange Street, 2nd Floor, to Gladys Melendez or Blanca Maldonado before these lessees became obligated under contracts to lease target housing from Respondent, as required by 49 C.F.R. § 745.107(a)(2)and (a)(4).

31. I conclude that Respondent's failure to disclose the presence of known lead-based paint or lead-based paint hazards and provide records or reports pertaining to the presence of lead based paint hazards to Gladys Melendez and Blanca Maldonado before these lessees became obligated under contracts to lease target housing from Respondent constitutes two (2) violations of 40 C.F.R. § 745.107(a)(2) and (a)(4) and Section 409 of TSCA, 15 U.S.C. § 2689.

32. Forty C.F.R. § 745.113(b)(1) requires a lessor to include within, or as an attachment to the contract to lease target housing, the "Lead Warning Statement."

33. Respondent failed to include the Lead Warning Statement within or as an attachment to contracts to lease target housing to Gladys Melendez, Felix Colon, Natalie Delgado, Yaris Sanz, and Madelin Regas, as required by 40 C.F.R. § 745.113(b)(1).

34. I conclude that Respondent's failure to include the Lead Warning Statement within or as attachments to the contracts to lease target housing to Gladys Melendez, Felix Colon, Natalie Delgado, Yaris Sanz, and Madelin Regas constitutes five (5) violations of 40 C.F.R. § 745.113(b)(1) and TSCA Section 409, 15 U.S.C. § 2689.

35. Forty C.F.R. § 745.113(b)(2) requires a lessor to include within or as an attachment to the contract to lease target housing 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 thereof.

36. Respondent did not include within or as an attachment to the contracts to lease target housing to Gladys Melendez, Felix Colon, Marylin Cotto Rivera, Natalie Delgado, Yaris Sanz, or Madelin Regas a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target house being leased, or indicating no knowledge thereof, as required by 40 C.F.R. § 745.113(b)(2).

37. I conclude that Respondent's failure to include within or as an attachment to the contracts to lease target housing to Gladys Melendez, Felix Colon, Marylin Cotto Rivera, Natalie Delgado, Yaris Sanz, and Madelin Regas a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge thereof, constitutes six (6) violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

38. Forty C.F.R. § 22.16(b) states that failure to file a response to a Motion for Default Order within fifteen (15) days of service is deemed to be a waiver of any objection to the granting of the motion.

39. Forty C.F.R. § 22.7(c) states that "[s]ervice of all documents [other than the complaint] is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document."

40. On July 16, 2010, Complainant filed a Motion for a Default Order. The Motion for Default Order was mailed to Respondent via first class certified mail on the date of filing.

41. I find that five (5) days shall be added to the fifteen (15) day period, for a total of twenty (20) days, for Respondent to file a response to the Motion for Default.

42. To date, Respondent has not filed a response to the Motion for Default Order.

43. I conclude that the twenty (20) day period for Respondent to file a response to the Motion for a Default Order, pursuant to 40 C.F.R. §§ 22.16(b) and 22.7(c), lapsed on August 15, 2010. Respondent's failure to respond to the Motion is deemed to be a waiver of any objection to the granting of the motion. 40 C.F.R. § 22.16(b).

DETERMINATION OF CIVIL PENALTY AMOUNT

Complainant requests the assessment of a penalty of $159,062.50 for the violations stated in the Complaint. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and 40 C.F.R. Part 745, Subpart F, authorize the assessment of a civil

penalty under Section 16 of TSCA, 15 U.S.C. § 2615, of up to $11,000 for each violation of the Disclosure Rule occurring after July 28, 1997 and on or before January 12, 2009, as adjusted by the Debt Collection and Improvement Act of 1996, 31 U.S.C. § 3701, 40 C.F.R. Part 19. Effective January 13, 2009, the maximum penalty per violation is $16,000.

In determining the amount of any penalty to be assessed, consideration is given to the statutory factors in Section 16 of TSCA, 15 U.S.C. § 2615. These factors include: the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, and any history of prior such violations, the degree of culpability, and other such matters as justice may require. 15 U.S.C. § 2615(a)(2)(B). In determining the penalty amount, specific reference must be made to EPA guidelines for penalties under TSCA, *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), dated December 2007 and updated by 73 Fed. Reg. 75340 (Dec. 11, 2008). (See Exhibit 14 to Complainant's Memorandum.) The ERPP considers the risk factors for exposure to lead-based paint and lead-based paint hazards.

Under the ERPP, there are two components to the penalty calculation: (1) determination of a "gravity-based penalty" and (2) upward or downward adjustments to the gravity-based penalty. The gravity-based penalty is determined by considering the nature and circumstances of the violation, and the extent of harm that may result from the violation. Each type of violation is assigned a "circumstance level" and an "extent," the combination of which determines the gravity-based penalty for each violation of the Disclosure Rule.

The "nature" of a violation is the essential character of the violation. Under the ERPP, the "nature" of violations of the Lead-Based Paint Disclosure Rule is a factor to be incorporated into the consideration of the "circumstances" and "extent" of the violations. The record indicates

that the nature of violations in this case is "hazard assessment," in that Respondent's failure to provide information concerning lead-based paint and/or lead-based paint hazards in the target housing prevented tenants from assessing the potential health consequences of exposure to such lead-based paint and/or lead-based paint hazards. (See Exhibit 14 to Complainant's Memorandum, at 11-12.)

The "circumstance level" of the violation reflects the probability that a buyer or lessee of property will suffer harm based on the particular violation. Harm is defined as the degree to which the buyer or lessee is denied the ability to properly assess and weigh the potential for human health risk from exposure to lead-based paint when entering into a transaction to buy or lease target housing. Circumstance levels for violations range from 1 to 6, with Levels 1 and 2 having a high probability of impairing a tenant's ability to assess the information required to be disclosed, Levels 3 and 4 having a medium probability of impairing the tenant's ability to assess the information required to be disclosed, and Levels 5 and 6 having a low probability of impairing the tenant's ability to assess the information required to be disclosed. (See Exhibit 14 to Complainant's Memorandum, at 12.)

The "extent" of harm is determined to be major, significant, or minor, depending on whether risk factors are high for childhood lead poisoning to occur as the result of the violation. "Major" violations have the potential for "serious" damage to human health or the environment; "significant" violations have the potential for "significant" damage to human health or the environment; and "minor" violations have the potential for "lesser" damage to human health or the environment. For housing units occupied by a pregnant woman and/or a child less than six years of age, the extent of harm for these violations under the ERPP is "major." For housing units occupied by a child between six years of age and eighteen years of age, the extent of harm

for these violations under the ERPP is "significant." For housing units occupied by a lessee without any children less than eighteen years of age, the extent of harm for these violations under the ERPP is "minor." The ERPP provides that a "significant" extent factor may be used when the age of the youngest individual is not known. (See Exhibit 14 to Complainant's Memorandum, at 12-13.)

The "nature," "circumstance," and "extent" factors are incorporated into the "Gravity-Based Penalty Matrix" to determine the gravity-based penalty amount. (See Exhibit 14 to Complainant's Memorandum, at 30.) Once the calculation is made, the penalty may be adjusted upward or downward based upon the following factors: ability to pay/ability to continue to do business; any history of prior violations; the degree of culpability; and such other factors as justice may require, including downward adjustments for supplemental environmental projects, voluntary disclosure, potential for harm due to risk of exposure, litigation risk, and the violator's attitude. (See Exhibit 14 to Complainant's Memorandum, at 14-23.)

The record supports a finding that Respondent's violations of 40 C.F.R. § 745.107(a)(1), failing to provide the lead hazard information pamphlet, resulted in a high probability of impairing lessee's ability to assess the potential for exposure to lead-based paint. Because Respondent failed to provide EPA-approved pamphlets to Gladys Melendez, Felix Colon, Marylin Cotto Rivera, Natalie Delgado, Yaris Sanz, and Madelin Regas, these lessees were denied the opportunity to become aware of potential health hazards from lead-based paint in pre-1978 housing. The record also supports a finding that Respondent's violations of 40 C.F.R. §§ 745.107(a)(2) and/or 745.107(a)(4), failing to disclose the presence of any known lead-based paint or lead-based paint hazards and/or provide records pertaining to the presence of lead-based paint or lead-based paint hazards in the target housing, resulted in a high probability of impairing

the ability of Gladys Melendez and Blanca Maldonado to assess the potential for exposure to lead-based paint. As a result, under the ERPP, violations of 40 C.F.R. §§ 745.107(a)(1), (a)(2), and (a)(4) are Circumstance Level 1 violations. (See Exhibit 14 to Complainant's Memorandum, at 27.) Accordingly, I find that it is appropriate to categorize such violations as Circumstance Level 1 for purposes of calculating the penalty.

The record supports a finding that Respondent's violations of 40 C.F.R. § 745.113(b)(1), failing to include, as an attachment or within the contracts to lease target housing, the "Lead Warning Statement," resulted in a high probability of impairing the ability of Gladys Melendez, Felix Colon, Natalie Delgado, Yaris Sanz, and Madelin Regas to properly assess the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing from Respondent. As a result, under the ERPP, a violation of 40 C.F.R. § 745.113(b)(1) is a Circumstance Level 2 violation. (See Exhibit 14 to Complainant's Memorandum, at 27.) Accordingly, I find that it is appropriate to characterize such violations as Circumstance Level 2 for purposes of calculating the penalty.

The record supports a finding that Respondent's violations of 40 C.F.R. § 745.113(b)(2), failing to include, as an attachment or within the contract to lease target housing, a statement of knowledge of lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards resulted in a medium probability of impairing the ability of Gladys Melendez, Felix Colon, Marylin Cotto Rivera, Natalie Delgado, Yaris Sanz, and Madelin Regas to properly assess the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing from Respondent. As a result, under the ERPP, a violation of 40 C.F.R. § 745.113(b)(2) is a Circumstance Level 3 violation. (See Exhibit 14 to Complainant's Memorandum, at 27.)

Accordingly, I find that it is appropriate to characterize such violations as Circumstance Level 3 for purposes of calculating the penalty.

The record supports a finding that Respondent's violations associated with the lease of Gladys Melendez are considered "major" in extent under the ERPP because she occupied her apartment with a child under the age of six. The record further supports a finding that Respondent's violations associated with the leases of Felix Colon, Marylin Cotto Rivera, Natalie Delgado, Yaris Sanz, Madelin Regas, and Blanca Maldonado are considered "significant" in extent under the ERPP because these tenants occupied their apartments with children between the ages of six and eighteen, or ages unknown to EPA at this time.

Based on the above analysis and the penalty amounts prescribed in the Gravity-Based Penalty Matrices of the ERPP, the following is a breakdown of gravity-based penalty amounts for each Count in the Complaint. (See Exhibit 14 to Complainant's Memorandum, at 30.)

Count I: Failure to provide lessees with an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1).

Circumstance:	High, Level 1	
Extent:	Five (5) Violations: Significant Extent	$38,700
	One (1) Violation: Major Extent	$11,000
Gravity-Based Penalty:		**$49,700**

Count II: Failure to disclose to lessees the presence of any known lead-based paint or lead-based paint hazards in target housing and/or provide available records of such, as required by 40 C.F.R. §§ 745.107(a)(2) and (a)(4).

Circumstance:	High, Level 1	
Extent:	One (1) Violation: Significant Extent	$8,500 [2]
	One (1) Violation: Major Extent	$11,000
Gravity-Based Penalty:		**$19,500**

[2] The violation of significant extent under Count II, pertaining to the lease agreement between Respondent and Blanca Maldonado of February 1, 2009, reflects the gravity-based penalty amount to be applied to violations occurring after January 12, 2009. All other violations in Counts I-IV occurred after March 15, 2004 and before January 12, 2009, and reflect the gravity-based penalty amounts for that period.

Count III: Failure to include the Lead Warning Statement as an attachment to or within the contract to lease target housing as required by 40 C.F.R. § 745.113(b)(1).

Circumstance:	High, Level 2	
Extent:	Four (4) Violations: Significant Extent	$25,800
	One (1) Violation: Major Extent	$10,320
Gravity-Based Penalty		**$36,120**

Count IV: Failure to include as an attachment to or within the contract to lease target housing a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof, as required by 40 C.F.R. §745.113(b)(2).

Circumstance:	Medium, Level 3	
Extent:	Five (5) Violations: Significant Extent	$25,800
	One (1) Violation: Major Extent	$7,740
Gravity-Based Penalty:		**$33,540**

The total gravity-based penalty amount for Counts I-IV is $138,860.00.

After calculating the gravity-based penalty, the ERPP provides for consideration of additional factors, consistent with TSCA, for upward or downward adjustment of the gravity-based penalty. Under TSCA Section 16(a)(2)(B), the following factors must be considered: ability to pay/ability to continue in business; history of prior violations; degree of culpability; and such other factors as justice may require. 15 U.S.C. § 2615(a)(2)(B). Complainant has the duty to make a *prima facie* case that the penalty is appropriate based on a consideration of all the statutory factors.

With respect to Respondent's ability to pay and ability to continue in business, I find it appropriate that no downward adjustment is made to the gravity-based penalty. The record reflects that Complainant provided Respondent with several opportunities to substantiate a financial inability-to-pay claim. EPA supplied Respondent with a list of financial documentation required to substantiate any inability-to-pay claim, both after filing the Complaint and after filing

the Motion for Default. Complainant also had several conversations with Respondent and/or Respondent's wife about the need to submit such documentation in order to substantiate an inability-to-pay claim. Respondent has not provided the requested financial documentation. As noted in prior Agency decisions, "[EPA's] ability to gather the necessary financial information about a respondent is limited, and the respondent is in the best position to obtain the relevant financial records about its own financial condition." *In re Spitzer Great Lakes*, 9 E.A.D. 302, 321 (EAB 2000) (citing *In re New Waterbury, Ltd.*, 5 E.A.D. 529, 541 (EAB 1994)). Therefore, consistent with Agency policy and prior Agency decisions, Complainant may presume that Respondent has an ability to pay the penalty until Respondent puts his ability to pay at issue. *New Waterbury*, 5 E.A.D. at 541; *Spitzer Great Lakes*, 9 E.A.D. at 321; *In re CDT Landfill Corp.*, 11 E.A.D. 88, 122 (EAB 2003); *In re Donald Cutler*, 11 E.A.D. 622, 632 (EAB 2004).

If a respondent fails to properly notify EPA that it plans to assert an inability-to-pay claim or fails to produce supporting financial documentation, then the Presiding Officer has the discretion to waive consideration of the ability-to-pay factor. See *Spitzer Great Lakes*, 9 E.A.D. at 32; *New Waterbury*, 5 E.A.D. at 542. See also 40 C.F.R. § 22.19(g) (provision governing prehearing exchanges, which provides that "[w]here a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion: (1) Infer that the information would be adverse to the party failing to provide it; (2) Exclude the information from evidence; or (3) Issue a default order under § 22.17(a)"). Because Respondent, after being given ample opportunity, has failed to provide any financial documentation, there is no rational way to assess Respondent's ability to pay. Therefore, I find that Respondent has waived any claim of inability to pay the penalty and I exercise my discretion to exclude the "ability to pay" and "continue to do business" penalty factor from further consideration.

With respect to culpability, I find that an upward adjustment of gravity-based penalties associated with the leases of Gladys Melendez, Felix Colon, Marylin Cotto Rivera, and Blanca Maldonado is appropriate. The ERPP provides for an upward adjustment of up to 25% based on the culpability factor. In determining a violator's culpability, the ERPP states that the following should be considered: the degree of control the violator had over the events constituting the violation; any actual knowledge of the presence of lead-based paint and/or lead-based paint hazards in the target housing being leased; the level of sophistication of the violator in dealing with compliance issues; and the extent to which the violator knew of the legal requirement that was violated. (See Exhibit 14 to Complainant's Memorandum, at 19.)

Based on my review of the record, I find that a 25% upward adjustment of the gravity-based penalties associated with Respondent's leases with Gladys Melendez, Felix Colon, Marylin Cotto Rivera, and Blanca Maldonado is appropriate. Respondent had control over the events constituting the violation. The record indicates that Respondent had actual knowledge of lead-based paint and/or lead-based paint hazards in the target housing being leased to Gladys Melendez and Blanca Maldonado. The record also reflects that Respondent had written notice of the legal requirements of the Disclosure Rule when he entered into leases with Gladys Melendez, Felix Colon, Marylin Cotto Rivera, and Blanca Maldonado.

The record reflects that EPA's Subpoena, served upon Respondent on August 9, 2007, provided clear notice to Respondent of the requirements of the Disclosure Rule. (See EPA's Subpoena, Exhibit 7 to Complainant's Memorandum.) Nevertheless, Respondent failed to comply with the requirements of the Disclosure Rule when he entered into leases with Gladys Melendez, Felix Colon, Marylin Cotto Rivera, and Blanca Maldonado after August 9, 2007. Additionally, the record reflects that Complainant hand-delivered a Subpoena Notice of

Noncompliance with another copy of the EPA Subpoena on November 2, 2007, once again providing notice of the Disclosure Rule requirements. (See Subpoena Notice of Noncompliance, Exhibit 7 to Complainant's Memorandum.) The record indicates that Respondent was further informed about the requirements of the Disclosure Rule by the 2004 LAMPP Letter and the 2008 Hartford Abatement Order referenced above. (See Exhibits 10 and 12 to Complainant's Memorandum.) Respondent was served with the detailed Petition to Enforce TSCA Subpoena on June 24, 2008, and met with Complainant on August 25, 2008, when EPA provided a Spanish interpreter and another compliance assistance package. However, after receiving the Petition to Enforce TSCA Subpoena and meeting with EPA, Respondent nevertheless entered into his lease with Blanca Maldonado without complying with the requirements of the Disclosure Rule. (See Maldonado lease, Exhibit 13 to Complainant's Memorandum; Petition and Certificate of Service, Exhibit 8; meeting notes, Exhibit 9.)

The calculation of a 25% upward adjustment for these four leases results in:

G. Melendez

Count I	Count II	Count III	Count IV	Total	+25%
$11,000.00	$11,000.00	$10,320.00	$7,740.00	$40,060.00	$10,015.00

F. Colon

$7,740.00	$0	$0	$6,450.00	$19,350.00	$ 4,837.50

M. Rivera

$7,740.00	$0	$0	$5,160.00	$12,900.00	$3,225.00

B. Maldonado

$0	$8,500.00	$0	$0	$8,500.00	$2,125.00

The 25% upward adjustment for these leases adds $20,202.50 to the total gravity-based penalty for Counts I-IV of $138,860.00, and results in a total penalty of $159,062.50.[3]

With respect to history of prior violations, because Respondent had no previous order, consent agreement, or conviction for Disclosure Rule violations, no upward adjustment is warranted based on this factor. With respect to other factors as justice may require, the ERPP provides for downward adjustments for Supplemental Environmental Projects, litigation risk, and Respondent's attitude in cases where a settlement is negotiated prior to a hearing. I find that none of these considerations are applicable in this case, and thus no adjustment is warranted based on these factors.

Based on the nature, circumstances, extent, and gravity of the violations, and with regard to the Respondent's ability to pay/continue in business, any history of prior violations, degree of culpability, and such other matters as justice may require, in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, I have determined that a 25% increase in the gravity-based penalties associated with Respondent's leases with Gladys Melendez, Felix Colon, Marylin Cotto Rivera, and Blanca Maldonado is appropriate.

Forty C.F.R. § 22.17(c) provides that the relief proposed in a motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the statute authorizing the proceeding. Based on my review of the record, I have determined that the $159,062.50 penalty amount requested in the Motion for Default Order is appropriate, as it is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with TSCA, the Residential Lead-Based Paint Hazard Reduction Act, the Disclosure Rule, or the ERPP.

[3] In its "Memorandum in Support of Motion for Default Order," Complainant includes Exhibit 19 which details the proposed penalty requested.

DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, a Default Order and Initial Decision is hereby ISSUED and Respondent is hereby ORDERED, as follows:

(1) Respondent Douglas Paulino is assessed a civil penalty in the amount of $159,062.50.

(2) Pursuant to 40 C.F.R. § 22.27(c), this initial decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings, unless: (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this initial decision is served upon the parties; (3) a party moves to set aside this Order, pursuant to 40 C.F.R. § 22.27(c)(3); or (4) the Environmental Appeals Board elects, upon its own initiative, to review this initial decision, pursuant to 40 C.F.R. § 22.30(b).

(3) Respondent shall, within thirty (30) calendar days after this Default Order has become final under 40 C.F.R. § 22.27(c), pay the civil penalty by bank, certified, or cashier's check in the amount of $159,062.50, payable to "Treasurer of the United States of America." Respondents should note of these checks the docket number for this matter (EPA Docket No. TSCA-01-2009-0066). The checks shall be forwarded to:

U.S. Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

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

Ms. 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

(4) A transmittal letter identifying the subject case and EPA docket number (EPA Docket No. TSCA-01-2009-0066), as well as Respondent's name and address must accompany the check.

(5) If Respondent fails to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11.

IT IS SO ORDERED.

Dated:

September 16, 2011

Jill T. Metcalf
Acting Regional Judicial Officer

Certificate of Service

I hereby certify that the **Initial Decision and Default Order** by Regional Judicial Officer Jill Metcalf in the matter of **Douglas Paulino**, **Docket No. TSCA-01-2009-0066**, was served on the parties as indicated.

UPS

Douglas Paulino
240 Walnut Street
Hartford, CT 06120

E-mail

Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building, Suite 600
1341 G. Street, N.W.
Washington, D.C. 20005

UPS

Assistant Administrator for Enforcement and Compliance Assurance
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Hand Delivered

Catherine Smith
Enforcement Counsel
U.S. EPA
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Dated: September 20, 2011

Wanda I. Santiago
Paralegal/Regional Hearing Clerk
US EPA Region 1
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