



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

**BY HAND**

September 28, 2018

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
5 Post Office Square  
Suite 100  
Boston, MA 02109 - 3912

RECEIVED

SEP 28 2018

EPA ORC  
Office of Regional Hearing Clerk

RE In the Matter of Ahmad Alijabbari  
Docket Number TSCA-01-2018-0061

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Complaint and Notice of Opportunity for Hearing and Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter DeCambre".

Peter DeCambre  
Senior Enforcement Counsel

cc: Ahmad Alijabbari

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

In the Matter of:

Ahmad Alijabbari  
5 Saint Tekakwitha Drive  
Lewiston, ME 04240

Respondent

ADMINISTRATIVE COMPLAINT  
AND  
NOTICE OF  
OPPORTUNITY FOR HEARING

Docket No. TSCA-01-2018-0061

Proceeding under Section 16(a) of the  
Toxic Substances Control Act,  
15 U.S.C. § 2615(a)

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Office of Regional Hearing Clerk

**I. STATEMENT OF AUTHORITY**

1. Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), issues this administrative Complaint and Notice of Opportunity for Hearing under 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/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

**II. NATURE OF THE ACTION**

2. This Complaint notifies Ahmad Alijabbari (“Respondent”) that EPA has determined that Respondent has violated Section 409 of TSCA, 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 the federal regulations promulgated thereunder, entitled “Disclosure of Known Lead Based Paint and/or

Lead Based Paint Hazards Upon Sale or Lease of Residential Property,” as set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). EPA seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by EPA of civil and/or criminal penalties.

### **III. STATUTORY AND REGULATORY BASIS**

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 (“LBP”), and that the ingestion of lead from deteriorated or abraded LBP 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 LBP hazards is taken into account in the rental of homes and apartments.

4. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subparts E and F.

5. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act, the Disclosure Rule, and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). See 40 C.F.R. § 745.103.

6. Pursuant to 40 C.F.R. § 745.103, “lessor” means any entity that offers target housing for lease, rent, or sublease.

7. The LBP Disclosure Rule regulations set forth at 40 C.F.R. Part 745, Subpart F, require that the lessors of target housing must take the following actions, among others, prior to lessees becoming obligated to lease target housing:

- a. Provide to lessees an EPA-approved lead hazard information pamphlet;
  - b. Disclose to lessees the presence of any known LBP and/or LBP hazards in the target housing being leased (“Disclosure Form”);
  - c. Include, either within or as an attachment to the lease contract, a Lead Warning Statement; and
  - d. Provide lessees with any records or reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased.
8. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule is a violation of Section 409 of TSCA.
9. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of Section 409 of TSCA shall be liable to the United States for a civil penalty.
10. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Pursuant to the Civil Penalties Inflation Adjustment Act of 2015, 81 Fed. Reg. 41465 (June 27, 2016), and 40 C.F.R. Part 19, violations that occurred on or after November 2, 2015, and assessed on or after January 15, 2018, are subject to penalties up to \$17,395 per violation. See also 83 Fed. Reg. 1190 (January 10, 2018).

#### **IV. GENERAL ALLEGATIONS**

11. Respondent, Ahmad Alijabbari, owns and manages fourteen residential buildings in Lewiston, Maine containing a total of approximately 78 housing units.

12. At the time of the violations alleged in this Complaint, Respondent owned and offered for lease residential apartments in three of the buildings referenced in Paragraph 11 including the following units:

- a. On March 26, 2017, a tenant entered into an oral agreement for lease, and moved into 226 Blake Street, Unit #7, Lewiston, Maine 04243, hereinafter referred to as “226 Blake Street, Unit #7.” Two children under six years old and a pregnant woman were resident;
- b. On January 1, 2017, a tenant entered into a lease agreement for 226 Blake Street, Unit #8, Lewiston, Maine 04243, hereinafter referred to as “226 Blake Street, Unit #8.” Four children under six years old were resident;
- c. On December 2, 2015, a tenant entered into a lease agreement for 54 Knox Street, Unit #1, Lewiston, Maine 04243, hereinafter referred to as “54 Knox Street, Unit #1.” Three children under six years old were resident; and
- d. On May 15, 2016, a tenant entered into a lease agreement for 62 Knox Street, Unit #3, Lewiston, Maine 04243, hereinafter referred to as “62 Knox Street, Unit #3.” Three children under six years old were resident.

13. Pursuant to 40 C.F.R. § 745.103, Respondent was and is the “lessor” of the four units listed on Blake Street and Knox Street, Lewiston, Maine referenced in Paragraph 12.

14. All the properties listed in Paragraph 12 above are target housing as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, none of those residential units satisfies the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).

15. On August 15, 2012, EPA conducted an inspection at the home office of Respondent located at 5 Saint Tekakwitha Drive, Lewiston, ME 04240 to evaluate Respondent's compliance with EPA's Disclosure Rule. The 2012 inspection resulted in the issuance of a "Notice of Noncompliance of Potential Violations for the Lead Disclosure Rule and Residential Property Renovation Requirements."
16. On April 27, 2017, an EPA representative conducted an inspection at the home office of Respondent to evaluate Respondent's compliance with EPA's Renovation, Repair, and Painting ("RRP") Rule and the Disclosure Rule.
17. During the inspection, the EPA inspector explained the requirements of EPA's Lead Disclosure and RRP Rules in detail, and provided Respondent a copy of EPA-Region 1's Compliance Assistance package for lead paint laws. Respondent provided EPA with leases, inspection reports, and Disclosure Forms. Sometime after the inspection, Respondent provided corrected Disclosure Forms. In September 2017, EPA collected additional leases and reports regarding Respondent's properties.
18. Documents provided by Respondent indicated that the following lead based paint record existed pertaining to 62 Knox Street, Unit #3: a Lead Inspection Report dated March 30, 2016.
19. During an interview on September 29, 2017, the tenant living in 62 Knox Street, Unit #3 stated to an EPA representative that two children living in the unit had elevated blood lead levels.
20. Based upon Complainant's review of information and documents obtained from Respondent, statements from lessees and EPA's subsequent investigations, EPA has identified the following violations of the Act and the Disclosure Rule.

## V. VIOLATIONS

### COUNT I: Failure of Respondent to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet

21. Complainant re-alleges paragraphs 1 through 20.
22. Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under a contract to lease target housing, a lessor must provide the lessee 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 for use by EPA.
23. Respondent did not provide an EPA-approved pamphlet to the following lessees, before the lessees were obligated under a contract to lease target housing:
  - a. On March 26, 2017, a tenant entered into an oral agreement for lease, and moved into 226 Blake Street, Unit #7. Two children under six years old and a pregnant woman were resident;
  - b. On January 1, 2017, a tenant entered into a lease agreement for 226 Blake Street, Unit #8. Four children under six years old were resident;
  - c. On December 2, 2015, a tenant entered into a lease agreement for 54 Knox Street, Unit #1. Three children under six years old were resident; and
  - d. On May 15, 2016, a tenant entered into a lease agreement for 62 Knox Street, Unit #3. Three children under six years old were resident.
24. Each of the above tenants provided EPA with a sworn statement that they did not receive an EPA-approved pamphlet before they were obligated under a contract to lease said housing.
25. Accordingly, Respondent's failure to provide an EPA-approved pamphlet to the lessees of target housing described in Paragraph 23 above before the lessees became contractually

obligated to lease said housing constitutes four (4) violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

**Count II – Failure to provide lessees any records or reports available pertaining to lead-based paint and/or lead based paint hazards in the target housing being leased.**

26. Complainant incorporates by reference Paragraphs 1 through 25.

27. Pursuant to 40 C.F.R. § 745.107(a)(4), a seller or lessor of target housing must provide the lessee any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee is obligated under a contract to lease the target housing.

28. Respondent did not provide the following lessee any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee became obligated to lease said target housing:

- a. On May 15, 2016, a tenant entered into a lease agreement for 62 Knox Street, Unit #3. Three children under six years old were resident.

29. Respondent did not provide the lessee the following record or report pertaining to lead-based paint and/or lead-based paint hazards for 62 Knox Street Unit #3: a Lead Inspection Report dated March 30, 2016.

30. Respondent's failure to provide a lessee with records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased listed in Paragraph 28 above before the lessee became obligated to lease the target housing constitutes one (1) violation of 40 C.F.R. § 745.107(a)(4) and TSCA Section 409, 15 U.S.C. § 2689.

## VI. PROPOSED CIVIL PENALTY

31. Based on the violations described in this Complaint, EPA seeks to assess a total civil penalty of \$86,975 against Respondent. The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. § 745.118(f), as well as the Civil Penalties Inflation Adjustment Act of 2015, 81 Fed. Reg. 41465 (June 27, 2016), and its implementing regulations at 40 C.F.R. Part 19. See also 83 Fed. Reg. 1190 (January 10, 2018).

32. In determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that Complainant consider the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, the effect of the proposed penalty on their ability to continue in business, any history of prior such violations, its degree of culpability, and such other matters as justice may require.

33. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (the "ERP"), a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. See Attachment 1 to this Complaint for an explanation of the rational for the proposed penalty.

### 34. Count I: Failure to Provide the EPA-approved Pamphlet

For four (4) violations of 40 C.F.R. § 745.107(a)(1), EPA proposes a total penalty of \$69,580, as follows:

- a. 226 Blake Street Unit #7: \$17,395.
- b. 226 Blake Street Unit #8: \$17,395.
- c. 54 Knox Street Unit #1: \$17,395.
- d. 62 Knox Street Unit #3: \$17,395.

35. Count II: Failure to Provide Lessees Any Records or Reports

For one (1) violation of 40 C.F.R. § 745.107(a)(4), EPA proposes a total penalty of \$17,395 as follows:

- a. 62 Knox Street Unit #3: \$17,395.

**VII. QUICK RESOLUTION**

36. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's or certified check, payable to "The Treasurer, United States of America." The check should also note the docket number of this Complaint (TSCA-01-2018-0061) and should be forwarded to:

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

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORC 4-6  
Boston, Massachusetts 02109-3912

and

Peter DeCambre  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square, Suite 100  
Mail Code: OES 4-2  
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 needs 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, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default. See 40 C.F.R. § 22.18(a).

37. Any settlement in this matter shall be made final by the issuance of a written Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

#### **VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

38. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint. **To avoid being found in default, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent

has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (ORC 4-6)  
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Peter DeCambre, the attorney assigned to represent EPA in this matter, at:

Peter DeCambre  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (OES 4-2)  
Boston, Massachusetts 02109-3912

39. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

**IX. INFORMAL SETTLEMENT CONFERENCE**

40. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is encouraged to contact Peter DeCambre, Senior Enforcement Counsel, at (617) 918-1890, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

**Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted to avoid default.** Peter DeCambre, Senior Enforcement Counsel, at the above address and telephone number, has been designated to represent Complainant, and is authorized to receive service of process in this action.

9/28/18  
Date

  
Joanna Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

## ATTACHMENT 1

### **In the Matter of Ahmad Alijabbari Docket Number TSCA-01-2018-0061**

#### **PROPOSED PENALTY SUMMARY**

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), EPA proposes a total civil penalty against Ahmad Alijabbari in the amount of eighty-six thousand nine hundred seventy five dollars (\$86,975). The rationale for the penalties is explained below.

#### **Count I - Failure to provide lessees with an EPA-approved lead hazard information pamphlet.**

**Provision Violated:** 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees 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 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 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. Where the age of the youngest individual is not known, EPA may use a significant extent factor.

Respondent Ahmad Alijabbari failed to provide an EPA-approved lead hazard information pamphlet to the lessees of target housing at the following addresses:

Address in Lewiston, Maine	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
<b>Lease Transactions</b>				
226 Blake Street Unit #7	March 26, 2017	Two children under six years old and a pregnant woman were resident	Major	\$17,395
226 Blake Street Unit #8	January 1, 2017	Four children under six years old were resident	Major	\$17,395
54 Knox Street Unit #1	December 2, 2015	Three children under six years old were resident	Major	\$17,395
62 Knox Street Unit #3	May 15, 2016	Three children under six years old were resident	Major	\$17,395
				<b>Total = \$69,580</b>

**Count II– Failure to provide lessees any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased.**

**Provision Violated:** 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees of target housing any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased.

**Circumstance Level:** Failing to provide lessees of target housing any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased, 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/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, violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Disclosure Rule ERP, a violation of 40 C.F.R. § 745.113(b)(3) 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. Where the age of the youngest individual is not known, EPA may use a significant extent factor.

Respondent Ahmad Alijabbari failed to provide the following lessee of target housing any records or reports that pertain to lead-based and/or lead-based paint hazards in the target housing being leased:

Address in Lewiston, Maine	Lease Date	Age of Youngest Occupant	Records Available	Extent of Harm	Gravity-Based Penalty
<b>Lease Transaction</b>					
62 Knox Street Unit #3	May 15, 2016	Three children under six years old were resident	A Lead Inspection Report dated March 30, 2016.	Major	\$17,395
					<b>Total = \$17,395</b>

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

In the Matter of: )  
)  
)

Ahmad Alijabbari )  
5 Saint Tekakwitha Drive )  
Lewiston, ME 04240 )

Respondent )  
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Docket No. TSCA-01-2018-0061

**Certificate of Service**

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

Original and One Copy  
(Hand-Delivered):

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100 (ORA 04-1)  
Boston, MA 02109-3912

Copy, including 40 C.F.R.  
Part 22 and Disclosure Rule  
Penalty Enforcement Response  
And Penalty Policy (Certified Mail,  
Return Receipt Requested):

Ahmad Alijabbari  
5 Saint Tekakwitha Drive  
Lewiston, ME 04240

Dated: September 28, 2018

  
\_\_\_\_\_  
Peter DeCambre  
Senior Enforcement Counsel  
U.S. EPA, Region I  
5 Post Office Square, Suite 100 (OES 4-2)  
Boston, Massachusetts 02109-3912