



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED
U.S. EPA, HEADQUARTERS

AUG 01 2019

ENVIRONMENTAL APPEALS BOARD

BY OVERNIGHT MAIL

July 30, 2019

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, Room 3332
Washington, DC 20004
(tel. 202-233-0122)

Re: In the Matter of: Investment Properties, L.L.C.
TSCA Appeal No. 19-01

Dear Sir/Madam:

Enclosed for filing in the above-referenced matter, please find the original and two copies of Region 1's Response to the Board's Sua Sponte Review, along with Certificate of Service.

Thank you for your assistance in this matter.

Very truly yours,


Audrey Zucker, Esq.

Enclosure

cc: Frederick Lockwood, Investment Properties, L.L.C. (by overnight mail)
Wanda Santiago, Regional Hearing Clerk (hand-delivered)

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

**RECEIVED
U.S. EPA, HEADQUARTERS**

AUG 01 2019

ENVIRONMENTAL APPEALS BOARD

In re:)	
)	
Investment Properties, L.L.C.)	
)	
Docket No. TSCA-01-2018-0017)	TSCA Appeal No. 19-01
)	
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)	
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REGION 1'S RESPONSE TO THE BOARD'S SUA SPONTE REVIEW

Region 1 of the United States Environmental Protection Agency (“the Region”) hereby responds to the Board’s Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule, issued on July 3, 2019 (“Board’s Order”), as follows:

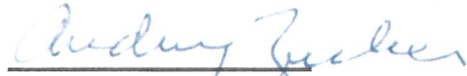
1. The Board’s Order asks Region 1 to re-examine its penalty calculation, and the Initial Decision and Default Order (“Default Order”) issued by the Regional Judicial Officer on May 23, 2019 based on Region 1’s penalty calculation, with respect to two violations in Counts II and III of the Complaint treating the violations at 166 Bartlett Street #3 as “major” even though the youngest child living in this residence was six years old. We have reviewed the Complaint, the Default Order, and the underlying documents and determined that the categorization of these penalties as “major” was an error, and that these penalties should have been characterized as “significant” under the relevant penalty policy. *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy* 13 (Dec. 2007), <https://www.epa.gov/sites/production/files/documents/1018erpp-1207.pdf>. Region 1 agrees with the Board’s calculation that the total penalty assessed should be reduced

by \$4,008 to \$78,888.

2. Region 1 also agrees that in Count I (failure to provide an EPA-approved lead hazard information pamphlet) of the Default Order (which was based on the Region's Proposed Default Order) there is a typographical error. Specifically, the references to lessees at 184 Bartlett Street #1 in Paragraph 26 and 29 of the Default Order, at 6, should have been references to 141 Bartlett Street #1.

Region 1 apologizes to the Board for the above-described errors in its pleadings and requests that the Board correct these errors as reflected in the Default Order.¹

Respectfully submitted,



Audrey Zucker, Esq.
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Dated: July 30, 2019

¹ Region 1 has been informed that the sole member of Investment Properties, L.L.C. has filed for bankruptcy relief. *See In Re: Frederick Lockwood*, 2:19-BK-20307 (D. Maine) (under Chapter 7 of the Bankruptcy Code). Because the member, rather than the limited liability corporation itself, has filed for bankruptcy relief, Region 1 does not believe that the automatic stay affects these proceedings. *See Slabicki v. Gleason and Carp*, 466 B.R. 572 (1st Cir.), citing to *Donarumo v. Furlong*, 660 F.3d 81, 89-90 (1st Cir.) (the automatic stay “. . . does not extend to the assets of a corporation in which the debtor has an interest, even if the interest is 100% of the corporate stock.”) In any event, the exemption to the automatic stay for police and regulatory actions applies to these proceedings. 11 U.S.C.A. § 362(b)(4).

TSCA Appeal No. 19-01

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, the foregoing Region 1's Response to the Board's Sua Sponte Review was sent to the following persons in the manner indicated:

Original and two copies sent by overnight mail:

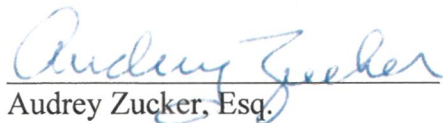
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East Building, Room 3332
Washington, DC 20004

Copy by overnight mail to:

Frederick Lockwood
Investment Properties, L.L.C.
474 Fort Hill Road
Gorham, ME 04038

Copy by hand-delivery:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, MA 02109-3912



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Dated: July 30, 2019