



received

4/7/2014

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARINGS CLERK  
EPA REGION III, PHILA. PA

2014 APR -3 PM 2:51

RECEIVED

In Re: :  
:  
:  
James Ikegwu and Martha : Docket No. TSCA-03-2011-0217  
Ikegwu :  
6409 Maple Avenue :  
Baltimore, Maryland 21207 :  
:  
Respondents : Proceeding under Sections 409  
:  
1700 North Castle Street : and 16(a) 15 U.S.C. §§ 2689 and  
Baltimore, Maryland 21213 : 2615(a), the Toxic Substances  
:  
Target Housing : Control Act

INITIAL DECISION AND DEFAULT ORDER

This Default Order is issued in a case brought under the authority of Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The Complaint and Notice of Right to Request Hearing ("Complaint") alleged that James Ikegwu and Martha Ikegwu ("Respondents") violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 et seq., and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the "Disclosure Rule").

The Second Motion for Default Order ("Second Motion for Default") filed by Complainant in this proceeding seeks an Order assessing a six thousand four hundred fifty dollar (\$6,450.00) civil penalty against Respondents. For the reasons set forth

below, Complainant's Second Motion for Default shall be granted.

### FINDINGS OF FACT

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

1. Respondents James Ikegwu and Martha Ikegwu are "persons" within the meaning of Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615. Compl., ¶ 2.

2. The residential real property that is the subject of this matter is located at 1700 North Castle Street, Baltimore, MD (the "Property") and presently consists of, and at all times relevant to the alleged violations, consisted of real property on which there is situated a building used as the home or residence for one or more persons. Id. at ¶ 6.

3. The building located on the Property consists of one single-family residential dwelling unit. Id. at ¶ 7.

4. At all times relevant to the violations, the building located on the Property was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as defined by 40 C.F.R. § 745.103. Compl., ¶ 9.

5. At all times relevant to the violations, the building located on the Property was both a "residential dwelling" and "target housing" within the meaning of Section 1004(23) and (27) of RLBPHRA, 42 U.S.C. §§ 4851b(23) and (27), Sections 401(14) and (17) of TSCA, 15 U.S.C. §§ 2681(14) and (17), and 40 C.F.R. § 745.103. Compl., ¶ 10.

6. At all times relevant to the violations, Respondents had legal title to the Property and the building located thereon (the "Target Housing"), and Respondents were therefore the "owners" of such "target housing" as those terms are defined by 40 C.F.R. § 745.103. Compl., ¶ 12.

7. During September of 1995, a representative of the Baltimore Health Department Childhood Lead Poisoning Prevention Program ("Baltimore-CHLPPP") conducted a lead evaluation inspection at the Target Housing. Compl., ¶ 24. As a result of the inspection, the Baltimore-CHLPPP determined that the Target Housing contained lead-based paint and/or lead based hazards. Id.

8. In May 2004, Respondents purchased the Target Housing. Id. at ¶ 25. Certain persons (the "Lessees") who resided in the Target Housing prior to the purchase continued to reside in the Target Housing after the purchase. Id.

9. During August 2006, the Baltimore-CHLPPP became aware that two children of the Lessees residing at the Target Housing were diagnosed with elevated blood-lead levels ("EBL"). Id. at ¶ 26.

10. On August 14, 2006, the Baltimore-CHLPPP notified Respondents in writing that EBL children were residing at the Target Housing. Id. at ¶ 27.

11. On September 1, 2006, a representative of the Baltimore-CHLPPP inspected the Target Housing. Id. at ¶ 28. The inspection revealed the presence of lead-based paint

containing lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm<sup>2</sup>] or 0.5 percent by weight in the Target Housing. Id.

12. On September 6, 2006, the Baltimore-CHLPPP issued to Respondents a written Violation Notice and Order, with the September 1, 2006 inspection results attached, which ordered Respondents to abate all lead hazards in the Target Housing caused by the presence of lead-based paint by October 6, 2006 ("Abatement Order"). Id. at ¶ 28.

13. On September 11, 2006, Respondent James Ikegwu came to the Baltimore-CHLPPP offices and requested an extension of time within which to comply with the Abatement Order. Compl., ¶ 30. The Baltimore-CHLPPP granted Respondents request and extended the deadline to October 28, 2006. Id.

14. During October of 2006, the Baltimore-CHLPPP issued to Respondents a notice of Baltimore-CHLPPP's intent to reinspect ("Reinspection Notice") in order to determine if the lead-based paint and/or lead-based paint hazards at the Target Housing had been abated. Id. at ¶ 31.

15. Respondents sent a letter, dated November 20, 2006, to the Baltimore-CHLPPP requesting an additional extension of four months to facilitate their effort to comply with the Abatement Order. Id. at ¶ 32.

16. On November 26, 2006, during a telephone conversation with Respondent James Ikegwu, a Baltimore-CHLPPP representative

verbally granted Respondents' request to extend the Abatement Order deadline to February 23, 2007. Id. at ¶ 33.

17. On February 22, 2007, Respondents entered into a written contract (the "Sales Agreement") with a purchaser (the "Purchaser"). Id. at ¶ 34. The contract obligated the Purchaser to purchase the Property, including the Target Housing located thereon. Id.

18. In connection with the sale of the Property and Target Housing, Respondents provided a notification to the Purchaser purporting to disclose Respondents' knowledge, or lack of knowledge, of lead-based paint and/or lead-based paint hazards in the target housing. Compl., ¶ 35. In the notification, Respondents indicated that they had no knowledge of lead-based paint or lead-based paint hazards in the Target Housing. Id.

19. Respondents entered into the Sales Agreement without abating the lead-based paint and or lead hazards in the Target Housing, without notifying the Purchaser of the Abatement Order, without notifying the Purchaser of the lead-based paint and/or lead based paint hazards in the target housing, and without providing the Purchaser with documents, records, and reports described in Paragraphs 10, 11, 12, 14, and 15, supra. Compl., ¶ 36.

20. On November 8, 2008, the United States Environmental Protections Agency Region III ("EPA") issued a subpoena under the authority of Section 11(c) of TSCA, 15 U.S.C. § 2610(c), Subpoena Duces Tecum # 450 (the "Original Subpoena") to

Respondents regarding possible violations of the Disclosure Rule at various properties owned by Respondents, including the Target Housing. Compl., ¶ 37.

21. EPA received Respondents' response to the Original Subpoena on January 5, 2009, signed by James Ikegwu. Id. at ¶ 38. In the letter, he stated, on behalf of Respondents, regarding the Target Housing that "everything about the house was disclosed to the buyer." Id.

22. On December 22, 2008, EPA issued a second subpoena under the Authority of Section 11(c) of TSCA, 15 U.S.C. § 2610(c), Subpoena Duces Tecum # 452 (the "Second Subpoena") to Respondents requesting information not provided in Respondents' answer to the Original Subpoena, concerning possible violations of the Disclosure Rule at various properties owned by Respondents, including the Target Housing. Compl., ¶ 39.

23. Respondents did not respond to the Second Subpoena. Id. at ¶ 40.

24. During and prior to the execution of the Sales Agreement, the Target Housing contained—and was known by Respondents to contain—"lead-based paint"<sup>1</sup> and "lead-based paint hazards"<sup>2</sup> as those terms are defined at 40 C.F.R. 745.103.

25. On September 28, 2011, an Administrative Complaint and Notice of Right to Request Hearing ("Complaint") was issued to

<sup>1</sup> "Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight." 40 C.F.R. 745.103.

<sup>2</sup> "Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency." 40 C.F.R. 745.103.

Respondents by the Director for the Land and Chemicals Division, EPA Region III ("Complainant"), pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit, 40 C.F.R. Part 22 ("Consolidated Rules").

26. The Complaint alleged, in two counts, that Respondents violated 40 C.F.R. ¶ 745.107(a)(4), Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA § 2689, 15 U.S.C. § 2689 by:

a. Count I: Failing to disclose to the Purchaser the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing prior to the Purchaser becoming obligated under the Sales Agreement to purchase such Target Housing and failing to disclose additional information 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, and the conditions of the painted surfaces, as required by 40 C.F.R. § 745.107(a)(2). Compl., ¶¶ 43-47.

b. Count II: Failing to provide the Purchaser with records or reports they received from the Baltimore CHLPPP pertaining to lead-based paint and/or lead-based paint hazards in the Target Housing prior to the Purchaser becoming obligated under the Sales Agreement to purchase such Target Housing as required by 40 C.F.R. § 745.107(a)(4). Compl., ¶¶ 48-51.

27. In the Complaint, Complainant proposed the specific penalty of six thousand four hundred fifty dollars (\$6,450.00). Compl., ¶ 54.

28. 40 C.F.R. § 22.15(a) provides that respondents must file an answer with the Regional Hearing Clerk within thirty (30) days after service of the complaint, and 40 C.F.R.

§ 22.15(c) provides that respondents have a right to request a hearing upon the issues raised by the complaint and answer.

29. 40 C.F.R. § 22.17(a) further provides that a party may be found in default "after motion, upon failure to file a timely answer to the complaint; . . . . Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations."

30. On September 29, 2011, Complainant successfully served the Complaint upon Respondents via the United Parcel Service, as evidenced by a UPS Proof of Delivery notice confirming the delivery, as specified in 40 C.F.R. § 22.5(b)(1). Mot. Default, ¶ 4 and Ex. 2.

31. Respondents did not file an Answer to the Complaint within thirty (30) days of service and has not, to date, filed an Answer or other response to the Complaint.

32. On September 25, 2012, Complainant submitted to this Court a Motion for Default ("First Motion for Default") stating that Respondents failed to file an Answer to the Complaint.

33. On October 22, 2012, this Court issued an Order to Supplement the Record Providing Proof of Compliance with 40 C.F.R. § 22.5.



34. On November 21, 2012, Complainant filed a Motion to Withdraw Complainant's Motion for Default Order because the First Motion for Default was neither filed with the Regional Hearing Clerk nor served on Respondents. See Complainant's Mot. to Withdraw Complainant's Mot. for Default.

35. On November 21, 2012, Complainant filed with the Regional Hearing Clerk a Second Motion for Default Order ("Second Motion for Default") stating that Respondents failed to file an Answer to the Complaint.

36. On November 21, 2012 the Second Motion for Default was sent via express mail, return receipt requested, to Respondents as specified in 40 C.F.R. § 22.5(b)(2). Mot. Default, Certificate of Service.

37. Respondents have not filed a response to the Second Motion for Default.

#### **CONCLUSIONS OF LAW**

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

38. The Complaint in this action was lawfully and properly served upon Respondents in accordance with the Consolidated Rules. See 40 C.F.R. § 22.5(b)(1)(i)-(ii)(A).

39. Respondents were required to file an Answer to the Complaint within thirty (30) days of service of the Complaint. See 40 C.F.R. § 22.15(a).

40. Respondents failed to file an Answer to the Complaint, and such failure to file an Answer to the Complaint, or

otherwise respond to the Complaint, constitutes an admission of all facts alleged in the Complaint, for the purposes of the pending proceeding only, and a waiver of Respondents' right to a hearing on such factual allegations. See 40 C.F.R. §22.17(a)

41. Complainant's Motion to Withdrawal the first Motion for Default as well as Complainant's Second Motion for Default were lawfully and properly served on Respondents. See 40 C.F.R. § 22.5(b) (2).

42. Because the Second Motion for Default was not served by overnight or same day delivery, Respondents were required to file any response to the Second Motion for Default within twenty (20) days of service. See 40 C.F.R. § 22.16 ("A party's response to any written motion must be filed within 15 days after service of such motion"); 40 C.F.R. § 22.7(c) ("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").

43. Respondents failed to respond to the Second Motion for Default, and such failure to respond to the Second Motion for Default is deemed to be a waiver of any objection to the granting of the motion. See 40 C.F.R. § 22.16(b).

44. Respondents are "persons" within the meaning of Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615. Compl., ¶ 2.

45. At all times relevant to the violations, the building located on the Property was both a "residential dwelling" and "target housing" within the meaning of Section 1004(23) and (27) of RLBPHRA, 42 U.S.C. §§ 4851b(23) and (27), Sections 401(14) and (17) of TSCA, 15 U.S.C. §§ 2681(14) and (17), and 40 C.F.R. § 745.103. Compl., ¶ 10.

46. At all times relevant to the violations, Respondents were the "owners" of such "target housing" as those terms are defined by 40 C.F.R. § 745.103. Compl., ¶ 12.

47. During and prior to the execution of the Sales Agreement, the Target Housing contained – and was known by Respondents to contain – "lead-based paint" and "lead-based paint hazards" as those terms are defined by 40 C.F.R. 745.103.

#### COUNT I

##### **Failure to Disclose Lead-Based Paint and/or Lead-Based Paint Hazards to Purchaser**

48. 40 C.F.R. § 745.107 sets forth the disclosure requirements for sellers of target housing and provides, in pertinent part, that:

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 745.101. . . .

. . . .

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose 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.

40 C.F.R. § 745.107(a)(2).

49. The sale of the Target Housing was not an exempt transaction pursuant to 40 C.F.R. § 745.101. Compl., ¶ 45.

50. Respondents did not disclose to the Purchaser the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing prior to the Purchaser becoming obligated under the Sales Agreement to purchase such Target Housing and failed to disclose additional information 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 pain hazards exist, and the conditions of the painted surfaces, as required by 40 C.F.R. § 745.107(a)(2). Compl., ¶ 46.

51. Pursuant to 40 C.F.R. § 745.118(e), Respondents' failure to disclose information described in this Count constituted a violation of 40 C.F.R. ¶ 745.107(a)(4), Section 1018(b)(5) of RLPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA § 2689, 15 U.S.C. § 2689.

## COUNT II

### **Failure to Provide Lead-Based Paint and/or Lead-Based Paint Hazard Records to Purchaser**

52. Pursuant to 40 C.F.R. § 745.107(a)(4), before the purchaser is obligated under any contract to purchase the target housing, the seller shall:

provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports regarding common areas.

40 C.F.R. § 745.107(a)(4).

53. Respondents did not provide the Purchaser with records or reports they received from the Baltimore CHLPPP pertaining to lead-based paint and/or lead-based paint hazards in the Target Housing prior to the Purchaser becoming obligated under the Sales Agreement to purchase such Target Housing as required by 40 C.F.R. § 745.107(a)(4). Compl., ¶ 50.

54. Pursuant to 40 C.F.R. § 745.118(e), Respondents' failure to provide the Purchaser with records or reports as described in this Count constitutes a violations of 40 C.F.R. § 745.107(a)(4), Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA § 2689, 15 U.S.C. § 2689.

#### **RESPONDENTS' CIVIL PENALTY LIABILITY**

55. Respondents' failure to comply with the requirements of 40 C.F.R. Part 745, Subpart F, constitutes a violation of TSCA Section 409, 15 U.S.C. § 2689, for which Respondents are liable for civil penalties under TSCA Section 16, 15 U.S.C. § 2615.

56. Respondents' failure to file a timely Answer to the Complaint or otherwise respond to the Complaint is grounds for the entry of a default order against Respondents assessing a civil penalty for the violations described above. See 40 C.F.R. § 22.17(a)-(c).

57. Respondents' failure to file a response to Complainant's Second Motion for Default is deemed a waiver of Respondents' right to object to the issuance of this Default Order. See 40 C.F.R. § 22.16(b).

#### **DETERMINATION OF CIVIL PENALTY AMOUNT UNDER TSCA**

58. Complainant requested the assessment of a civil penalty in the amount of six thousand four hundred fifty dollar (\$6,450.00) for the TSCA violations alleged in the Complaint. Mot. Default, ¶ 10. The proposed penalty is based upon Complainant's consideration of the statutory penalty factors set forth in Section 16 of TSCA, 15 U.S.C. § 2615, with specific reference to EPA's December 2007 Section 1018 Disclosure Rule Enforcement Response and Penalty Policy ("ERP"). Mot. Default, ¶ 8.

59. Section 1018(b)(5) of the Lead Paint Disclosure Act, 42 U.S.C. § 4852d(b)(5), authorizes the assessment of a civil penalty amount under Section 16 of TSCA, 15 U.S.C. § 2615, up to the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This amount was adjusted in the Complaint to \$11,000 per violation under the Civil Monetary

Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, for each violation occurring after July 28, 1997. Mot. Default., ¶ 7.

60. Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other such matters as justice may require (the "TSCA statutory penalty factors").

61. The ERP provides a rational, consistent, and equitable methodology for applying the statutory penalty factors enumerated above to the specific facts and circumstances of this case. See ERP, 3. Under the ERP, the penalty calculation relies primarily on two components: the "circumstances" level and the "extent" level. The "circumstance" level looks at the relative risk that the violation would impair the ability of the lessee to evaluate the risks of lead exposure at the property. ERP, 12. Circumstance levels range from Level 1 to Level 6, with Level 1 being the most serious. Id. The "extent" level will focus on the overall intent of the rule, which is to prevent childhood lead poisoning. Id. at 12-13. More specifically, the "extent" level looks at the nature of the persons potentially exposed to lead paint hazards, with the highest levels being assigned where the most vulnerable persons—children under the age of six and/or pregnant women—will occupy the premises. Id.

62. The penalty proposed by Complainant in this matter was based upon Respondents' failure to comply with certain provisions of the 40 C.F.R. Part 745, Subpart F. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant provided an explanation of the number of and severity of the violations in the Complaint. Mot. Default, Ex. 1.

63. Complainant explained the proposed extent level as follows:

Count I

40 C.F.R.  
§ 745.107(a)(2)

Respondents failed to disclosure to the purchaser the presence of known lead-based paint and/or lead based paint hazards.

Circumstances-  
Level 1

If knowledge of lead-based paint in the house is not provided to the purchaser, the purchaser's ability to assess the information concerning the presence of lead-based paint in the house is impaired.

Extent-Minor<sup>3</sup>

The violation has the potential for a "lesser" amount of damage to human health or the environment because the person potentially exposed to lead paint hazards is not a vulnerable person.

Penalty Count I.....\$2,580.00

Count II

40 C.F.R.

Respondents failed to provide records to the

<sup>3</sup> Minor violations have the "[p]otential for a 'lesser' amount of damage to human health or the environment." ERP, 13. Extent is based on two factors: "the age of any children who live in the target housing; and whether a pregnant woman lives in the target housing." *Id.* The record is void on the presence of children and/or pregnant women at the time of the violations alleged in the Complaint. The Complainant's calculation of civil penalties would seem to indicate that there were no children and/or pregnant women residing at the Target Housing because of the "minor" designation. Therefore, the lesser determination is consistent with the ERP.



§ 745.107(a)(4) purchaser regarding the presence of known lead-based paint and/or lead-based paint hazards.

Circumstances-  
Level 1<sup>4</sup> If reports or records of lead-based paint in the house are not provided to the purchaser, the purchaser's ability to assess the information concerning the presence of lead-based pain in the house is impaired.

Extent-Minor<sup>5</sup> The violation has the potential for a "lesser" amount of damage to human health or the environment because the person potentially exposed to lead paint hazards is not a vulnerable person.

Penalty Count II.....\$2,580.00

**Initial Penalty Amount** **\$5,160.00**

**+ Culpability Enhancement** **+ \$1,290.00**  
**(Initial Penalty increased by 25%)**

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**Total Proposed Penalty** **\$6,450.00**

64. Under the ERP, the "culpability of the violator should be reflected in the amount of the penalty, which may be increased by up to 25% for this factor." ERP, 19. Complainant enhanced the civil penalty by twenty-five percent due to Respondents' culpability. Mot. Default, Ex. 1, 6. The twenty-five percent enhancement was warranted because, as Complainant explained:

Under the ERP the two principle criteria for addressing culpability are: (a) The violator's knowledge of the Disclosure Rule, and (b) the degree of the violator's control over the violative condition.

- (a) The violator's knowledge of the Disclosure Rule:  
Because of the State of Maryland's lengthy contacts with Respondents, and Respondents' subsequent actions; it is reasonable to believe Respondents had sufficient knowledge of the

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<sup>4</sup> Level 1 "[v]iolations having a high probability of impairing the purchaser's or lessee's ability to assess the information required to be disclosed." ERP, 12.

<sup>5</sup> See Footnote 3.

Disclosure Rule prior to committing the above violations.

- (b) The degree of the violator's control over the violative condition: Respondents had total control over their obligation to disclose information and documentation to the purchaser.

Mot. Default, Ex. 1, 6.

65. Complainant did not adjust the proposed penalty to account for any inability to pay on the part of Respondents because Complainant has no information indicating that Respondents had an inability to pay the proposed penalty. Mot. Default, ¶ 8. Since the filing of the Complaint, Respondents have not taken advantage of the opportunity to provide Complainant with information regarding any inability to pay the proposed penalty. Id. The Environmental Appeals Board has consistently held that a respondent's ability to pay a proposed penalty may be presumed until it is put at issue by a respondent. In re Spitzer Great Lakes Ltd., 9 E.A.D. 302, 219-21 (E.A.B. 2000). Furthermore, where a respondent does not raise its ability to pay as an issue in an answer to a complaint and does not produce any evidence to support such a claim, a complainant may properly argue, and the presiding officer may conclude, that any objection to the penalty based upon ability to pay has been waived and that no penalty reduction is warranted. Id.; see also 56 Fed. Reg. 29996, 30006 (July 1, 1991) (stating that "[i]f the [r]espondent has not met its burden of going forward regarding its inability to pay a civil penalty, the complainant carries no burden on this issue; the

respondent will be deemed able to pay the maximum statutory penalty.").

66. The official record is devoid of any information submitted by Respondents raising inability to pay the penalty assessed in this manner. Therefore, in light of the above, I find that Respondents are able to pay.

#### **CONCLUSION**

Complainant proposes a penalty of six thousand four hundred fifty dollar (\$6,450.00) against Respondents for the violations alleged in the Complaint in accordance with the statutory factors set forth in Section 16 of TSCA, 15 U.S.C. § 2615.

I have determined that the penalty amount of six thousand four hundred fifty dollar (\$6,450.00) proposed by Complainant and requested in the Second Motion for Default is not inconsistent with TSCA and the record in this proceeding and is appropriate based on the record and Section 16 of TSCA, 15 U.S.C. § 2615.

#### **ORDER**

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. §§ 22.16, Complainant's Motion to Withdraw Complainant's First Motion for Default Order is hereby **GRANTED**. Further, pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. §§ 22.17, Complainant's Second Motion for Default is hereby **GRANTED**, and Respondents are hereby **ORDERED** as follows:

1. Respondents are hereby assessed a civil penalty in the amount of six thousand four hundred fifty dollar (\$6,450.00) and ordered to pay the civil penalty as directed in this Order.

2. Respondents shall pay the civil penalty to the "**United States Treasury**" within thirty (30) days after this Default Order has become final. See ¶ 7 below. Respondents may use the following means for penalty payment:

a. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

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

Contact: Craig Steffen - (513-587-2091)

b. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Craig Steffen - (513-587-2091)

c. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 69010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

(Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency")

d. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006 Environmental Protection Agency  
CTZX Format Transaction Code 22 - Checking

Physical location of the U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact for ACH: John Schmid - (202-874-7026)

e. On-Line Payment Option:

WWW.PAY.GOV

Enter "sfo 1.1" in the search field.  
Open form and complete required fields.

3. At the same time that payment is made, Respondents shall mail copies of any corresponding check, or written notification confirming any electronic fund transfer or online payment, as applicable, to:

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Rodney Travis Carter  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029

4. Along with its civil penalty remittance made pursuant to ¶ 2, supra, and with the copy of the check or written notification (confirming any electronic fund transfer or online payment) sent pursuant to ¶ 2, supra, Respondents shall include a transmittal letter identifying the caption (In re James Ikegwu and Martha Ikegwu) and the docket number (TSCA-03-2011-0217) of this action.

5. In the event of failure by Respondents to make payment as directed above, this matter may be referred to a United States Attorney for recovery by appropriate action in United States District Court.

6. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debt owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on any unpaid amount of this civil penalty pursuant to 40 C.F.R. § 22.27(c). Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged in all such debts. 40 C.F.R. § 13.11(b). Pursuant to EPA Resources Management Directives Systems, Chapter 9, EPA will assess a \$15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid. In addition, a penalty charge

of up to six percent per year will be assessed on any portion of the debt which remains delinquent more than 90 days after payment is due. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due. 31 C.F.R. § 901.9(d).

7. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. §§ 22.17(c) and 22.27(a). This Initial Decision shall become a Final Order forty-five (45) days after it is served upon Complainant and Respondents unless: (1) a party appeals this Initial Decision to the EPA Environmental Appeals Board in accordance with 40 C.F.R. § 22.30<sup>6</sup>; (2) a party moves to set aside the Default Order that constitutes the Initial Decision; or (3) the Environmental Appeals Board elects to review the Initial Decision on its own initiative. See 40 C.F.R. § 22.27(c).<sup>7</sup>

**IT IS SO ORDERED.**

4/3/14  
Date

Renee Sarajian  
Renee Sarajian  
Regional Judicial Officer/  
Presiding Officer  
U.S. EPA, Region III

<sup>6</sup> Under 40 C.F.R. § 22.30, any party may appeal this Order by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board within thirty (30) days after this Initial Decision is served upon the parties.

<sup>7</sup> The Certificate of Service is being served on the most current address of Respondents in accordance with 40 C.F.R. § 22.6.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029

RECEIVED  
 2011 APR - 3 PM 2:51  
 REGIONAL HEARING OFFICE  
 EPA REGION III, PHILADELPHIA, PA

In Re: :  
 :  
 :  
 James Ikegwu and Martha : Docket No. TSCA-03-2011-0217  
 Ikegwu :  
 6409 Maple Avenue :  
 Baltimore, Maryland 21207 : Proceeding under Sections 409  
 : and 16(a) 15 U.S.C. §§ 2689 and  
 Respondents : 2615(a), the Toxic Substances  
 : Control Act  
 :  
 1700 North Castle Street :  
 Baltimore, Maryland 21213 :  
 :  
 Target Housing :

CERTIFICATE OF SERVICE

This Initial Decision and Default Order (Docket No.: TSCA-03-2011-0217) was served on the date below, by the manner indicated, to the following people:

**VIA HAND DELIVERY:**

Rodney Travis Carter  
 Senior Assistant Regional Counsel  
 U.S. Environmental Protection Agency  
 Region III (Mail Code 3RC50)  
 1650 Arch Street  
 Philadelphia, PA 19103-2029

**VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED:**

James Ikegwu and Martha Ikegwu  
 6409 Maple Avenue  
 Gwynn Oak, Maryland 21207



**VIA EPA POUCH:**

Eurika Durr  
Clerk of the Board  
Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

APR 03 2014

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*Lydia Guy*

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Date

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029