

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:)

Landmark Real Estate Management, Inc.)

Solo Affordable Housing Solutions, LLC)

Solo Development 2004, LLC)

Minbar Properties, LLC)

87 Bartlett Street Associates, LLC)

P.O. Box 891)

Lewiston, MA 04243)

LA Italian Properties, LLC)

P.O. Box 4510)

Portland, ME 04112)

Travis Soule dba Fish Properties)

19 Woodland Way)

New Gloucester, ME 04620)

Respondents.)

EPA Docket Number
TSCA-01-2009-0106

PROPOSED DEFAULT ORDER

I. Introduction

The United States Environmental Protection Agency, Region 1 (“the Region”) commenced this proceeding on September 25, 2009, by filing a Complaint against Landmark Real Estate Management, Inc.; Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; LA Italian Properties, LLC; and Travis Soule dba Fish Properties (collectively “Respondents”). The Complaint charged Respondents with violations of Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689; the Residential Lead-

Based Paint Hazard Reduction Act of 1992 (“Lead Hazard Reduction Act”), 42 U.S.C. §§ 4851 *et seq.*; and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (“Lead Disclosure Rule”). The Complaint proposed a total civil penalty of \$227,700.

The Region filed the Complaint on September 25, 2009, with service completed to all Respondents by October 1, 2009. To date, Respondents have not filed an Answer, nor have Respondents requested an extension of the time period to submit an Answer to the Complaint. In accordance with Rule 22.17(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, this constitutes an admission of the facts alleged in the Complaint and provides the basis for an assessment of the proposed civil penalty amount of \$227,700. For the reasons discussed below, I find Respondents in default, pursuant to Section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), and assess the proposed penalty of \$227,700 against them.

II. Findings of Fact and Conclusions of Law

1. The Complainant is the United States Environmental Protection Agency, Region 1 (“the Region”).
2. The Respondents include Landmark Real Estate Management, Inc.; Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; LA Italian Properties, LLC; and Travis Soule dba Fish Properties.
3. Between March 22, 2007 and July 21, 2008, Respondents Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; LA Italian Properties, LLC; and Travis Soule dba Fish Properties owned and offered for lease approximately 100 low-income housing units on about eighteen properties in Lewiston, Maine. These Respondents constitute “owners” and “lessors,” as defined in 40 C.F.R.

§ 745.103.

4. Respondent Landmark Real Estate Management, Inc. managed and offered for lease the properties owned by the Respondents listed above in paragraph 3. This Respondent is a "lessor," as defined in 40 C.F.R. § 745.103.
5. The housing units owned and/or managed and offered for lease by Respondents, constructed prior to 1978, 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.
6. On July 21, 2006, October 31, 2007, and May 6, 2008, the Maine Department of Health and Human Services issued abatement orders on four apartments owned and/or managed and offered for lease by Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC, in response to findings of elevated blood lead levels in at least one child residing in each of these apartments.
7. 40 C.F.R. § 745.107(a)(2) requires a lessor to disclose to the lessee the presence of any known lead-based paint and/or lead based paint hazards, or indicate no knowledge of the presence of lead based paint and/or lead-based paint hazards, in the target housing being leased before the lessee becomes obligated under the lease contract.
8. 40 C.F.R. § 745.107(a)(4) requires a lessor to provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee becomes obligated under a lease contract.
9. Respondents Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC failed to disclose the presence of known lead-based paint and/or lead-based paint hazards and/or to provide records or reports of known lead-based paint and/or lead-based paint hazards to the lessee of one housing unit who signed a contract to lease target housing on April 13, 2007.¹
10. At the time Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC executed the lease described above in paragraph 9, these Respondents had received an abatement order issued by the Maine Department of Health and Human Services on July 21, 2006, which described lead-based paint hazards in the aforementioned housing unit.
11. The failure of Respondents Landmark Real Estate Management, Inc. and Solo Affordable Housing Solution, LLC to disclose to the lessee the presence of known lead-based paint and/or lead-based paint hazards in target housing and/or to provide records or reports of known lead-based paint and/or lead-based paint

¹ The lessee of this housing unit did not have any children under the age of eighteen at the time the lease was signed.

hazards with respect to one contract for the lease of target housing constitutes a violation of 40 C.F.R. § 745.107(a)(2) and/or 40 C.F.R. § 745.107(a)(4), and Section 409 of TSCA, 15 U.S.C. § 2689.

12. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, as an attachment to or within lease contracts, a statement by the lessor disclosing the presence of known 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, in the target housing being leased.
13. Between March 22, 2007 and July 21, 2008, Respondents failed to include, as an attachment to or within lease contracts, a statement by the lessors disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for eleven lease contracts;² (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for two lease contracts;³ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;⁴ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract;⁵ (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract;⁶ and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.⁷
14. The failure of Respondents to include, as an attachment to or within the lease contracts described above in paragraph 13, a statement by the lessors disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, constitutes eighteen violations of 40 C.F.R. § 745.113(b)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.
15. 40 C.F.R. § 745.113(b)(3) requires a lessor to include, as an attachment to or within lease contracts, a list of any records or reports available to the lessors that pertain to lead-based paint and/or lead-based paint hazards, or indicate that no such records or reports exist, for the target housing.
16. Between March 22, 2007 and July 21, 2008, Respondents failed to include, as an attachment to or within lease contracts, a list of any records or reports available to the lessors that pertain to lead-based paint and/or lead-based paint hazards in the

² Seven of the lessees under these contracts had one to five children, ranging in age from infants to nine years old, at the time the leases were signed.

³ One of the lessees under these contracts had a six month old child at the time the lease was signed.

⁴ One of the lessees under these contracts had three children, ranging in age from three to eight years old, at the time the lease was signed.

⁵ The lessee under this contract had a two-year old child at the time the lease was signed.

⁶ The lessee under this contract had a two-month old child at the time the lease was signed.

⁷ The lessee under this contract had a fourteen-year old child at the time the lease was signed.

housing, or indicate that no such records or reports exist, as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for eleven lease contracts;⁸ (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for two lease contracts;⁹ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;¹⁰ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract;¹¹ (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract;¹² and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.¹³

17. The failure of Respondents to include, as an attachment to or within the lease contracts described above in paragraph 16, a list of any records or reports available to the lessors that pertain to lead-based paint and/or lead-based paint hazards in the housing, or indicate that no such records or reports exist, constitutes eighteen violations of 40 C.F.R. § 745.113(b)(3) and Section 409 of TSCA, 15 U.S.C. § 2689.
18. 40 C.F.R. § 745.107(a)(1) requires a lessor of target housing to provide lessees with an EPA-approved lead hazard information pamphlet entitled *Protect Your Family from Lead in Your Home*, or an equivalent pamphlet approved by EPA for use in the state, before the lessee becomes obligated under any contract to lease target housing.
19. Between March 22, 2007 and July 21, 2008, Respondents failed to provide an EPA-approved lead hazard information pamphlet to lessees of target housing who entered into lease contracts before those lessees became obligated under the contracts, as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for nine lease contracts;¹⁴ (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for one lease contract;¹⁵ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;¹⁶ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract;¹⁷ and (5) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease

⁸ Seven of the lessees under these contracts had one to five children, ranging in age from infants to nine years old, at the time the leases were signed.

⁹ One of the lessees under these contracts had a six month old child at the time the lease was signed.

¹⁰ One of the lessees under these contracts had three children, ranging in age from three to eight years old, at the time the lease was signed.

¹¹ The lessee under this contract had a two-year old child at the time the lease was signed.

¹² The lessee under this contract had a two-month old child at the time the lease was signed.

¹³ The lessee under this contract had a fourteen-year old child at the time the lease was signed.

¹⁴ Six of the lessees under these contracts had one to six children, with known ages ranging from infants to three years old, at the time the leases were signed.

¹⁵ The lessee under this contract did not have any children under the age of eighteen at the time the lease was signed.

¹⁶ One of the lessees under these contracts had three children, ranging in age from three to eight years old, at the time the lease was signed.

¹⁷ The lessee under this contract had a two-year old child at the time the lease was signed.

contract.¹⁸

20. The failure of Respondents Landmark Real Estate Management, Inc.; Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; and Travis Soule dba Fish Properties to provide an EPA-approved lead hazard information pamphlet to the lessees described above in paragraph 19 before the lessees became obligated to lease target housing constitutes fourteen violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.
21. I find that Respondents violated TSCA, the Lead Hazard Reduction Act, and the Lead Disclosure Rule, as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for thirty-two lease contracts; (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for five lease contracts; (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for six lease contracts; (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for three lease contracts; (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for two lease contracts; and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for three lease contracts.

III. Determination of Civil Penalty Amount

22. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default, “[t]he relief proposed in the complaint ... shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c).
23. In determining the amount of any penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires the Complainant to consider the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violators, ability to pay, the effect of the proposed penalty on the ability of the violators to continue to do business, any history of prior violations, the degree of culpability of the violators, and such other matters as justice may require.
24. To assess a penalty for the violations alleged in the Complaint, Complainant took 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 (“ERPP”). The ERPP considers the risk factors for exposure to lead-based paint and lead-based paint hazards.
25. Section 1018(b)(5) of the Lead Hazard Reduction Act and 40 C.F.R. § 745.118(f), as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, provide that for

¹⁸ The lessee under this contract had a fourteen-year old child at the time the lease was signed.

purposes of enforcing the Lead Disclosure Rule under the TSCA, the penalty for each violation applicable under Section 16 of TSCA shall be no more than \$11,000 for violations that occurred after July 28, 1997 and on or before January 12, 2009.

26. A lessor's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide to the lessee any available records or reports of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.107(a)(2) and/or § 745.107(a)(4), results in a high probability of impairing a lessee's ability to properly assess and weigh the potential health risks associated with leasing target housing, greatly increasing the likelihood of exposure to lead-based paint. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.107(a)(2) and/or § 745.107(a)(4) constitutes a Level 1 violation.
27. A lessor's failure to include, as an attachment to or within a lease contract, a statement disclosing 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, as required by 40 C.F.R. § 745.113(b)(2), results in a significant probability of impairing a lessee's ability to properly assess the risks associated with leasing target housing. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.113(b)(2) constitutes a Level 3 violation.
28. A lessor's failure to provide a potential lessee with a list of records or reports that pertain to lead-based paint or lead-based paint hazards, or failure to indicate that no such records or reports exist, as required by 40 C.F.R. § 745.113(b)(3), results in a low impact on the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards in target housing. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.113(b)(3) constitutes a Level 5 violation.
29. A lessor's failure to provide a potential lessee with an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1), results in a high probability of impairing a lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing target housing. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.107(a)(1) constitutes a Level 1 violation.
30. For the housing units occupied by a pregnant woman and/or a child under six years of age, or where the age of the occupant is unknown, 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 under eighteen years of age, the extent of harm for these violations under the ERPP is "minor."
31. Based on my findings of Respondents' violations of TSCA, the Lead Hazard

Reduction Act, and the Lead Disclosure Rule, as set forth in paragraph 21 above, I have determined that \$227,700 constitutes the appropriate total civil penalty to assess against Respondents, distributed as follows:

i. Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC (32 violations).....	\$142,680
ii. Landmark Real Estate Management, Inc. and Solo Development 2004, LLC (5 violations).....	\$13,930
iii. Landmark Real Estate Management, Inc. and Minbar Properties, LLC (6 violations)	\$24,930
iv. Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC (3 violations)	\$21,320
v. Landmark Real Estate Management, Inc. and LA Italian Properties, LLC (2 violations)	\$10,320
vi. Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties (3 violations)	\$14,580.

32. The total civil penalty of \$227,700 assessed in this matter is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with TSCA.
33. In assessing this civil penalty against Respondents, I took into consideration the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violators, ability to pay, the effect of the proposed penalty on the ability of the violators to continue to do business, any history of prior violations, the degree of culpability of the violators, and such other matters as justice may require, in accordance with Section 16 of TSCA, 15 U.S.C. § 2615.
34. In assessing this penalty, I find persuasive the rationale for the calculation of the assessed penalty set forth in the Complaint, as well as in the Complainant's Memorandum in Support of Default Order, filed in this proceeding. Accordingly, I incorporate such rationale by reference into this Order.

III. Order

1. For failing to file an Answer to the Complaint, Respondent is hereby found in **DEFAULT**.
2. Respondents Landmark Real Estate Management, Inc.; Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; LA Italian Properties, LLC; and Travis Soule dba Fish Properties are assessed a civil administrative penalty in the amount of \$227,700, distributed in the manner set forth above in paragraph 31.
3. Respondents shall pay the civil penalty with bank, cashier's, or certified checks, payable to the Treasurer, United States of America. Respondents should note on these checks the docket number for this matter (EPA Docket No. TSCA-01-2009-

0106). The checks shall 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, notice of payment of the civil penalty and copies of the checks 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, as well as Respondents' names and addresses, must accompany the checks.
5. If Respondents fail to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. *See* 31 U.S.C. § 3717; 40 C.F.R. § 13.11
6. 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; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this initial decision, pursuant to 40 C.F.R. § 22.30(b).

Jill T. Metcalf
Acting Regional Judicial Officer

Dated:

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Default Order, Memorandum in Support of Default Order, and Proposed Default Order has been sent to the following persons on the date noted below:

Original and one copy,
by hand:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109

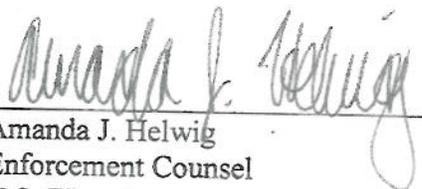
One copy by certified mail,
return receipt requested:

Travis Soule, President/Manager
Landmark Real Estate Management, Inc.
Solo Affordable Housing Solutions, LLC
Solo Development 2004, LLC
Minbar Properties, LLC
87 Bartlett Street Associates, LLC
P.O. Box 891
Lewiston, MA 04243

Travis Soule, Manager
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Date: 4.9.10


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