UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF: **JOHN LAUGHTER** 17 Gano Avenue Johnston, Rhode Island 02919 Respondent.	EPA Docket Number TSCA-01-2010-0007

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 January 19, 2010, by filing a Complaint against Respondent, John Laughter. In its Complaint, EPA alleged that Respondent committed four 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 for each violation by the Respondent.

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 $30,960.00 be assessed against the Respondent.

Based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Penalty Calculation, the Complainant's Motion for Default Order is 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 $36,960.00 is assessed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. Complainant is the United States Environmental Protection Agency, Region I.
2. Respondent is John Laughter, a lessor under 40 C.F.R. § 745.103.
3. At all times relevant, Respondent owned and offered for lease four residential apartment units at 92 Benefit Street and 290 Rathbun Street, Woonsocket, Rhode Island[1].
4. The buildings at 92 Benefit Street and 290 Rathbun Street were constructed prior to 1978 and meet the definition of target housing under 40 C.F.R. §745.103.
5. Unit 2 at 92 Benefit Street in Woonsocket, Rhode Island was subject to a lead inspection on December 1, 1999. From this inspection, an Environmental Lead Inspection Report ("RWE Report") was generated.

[1] 290 Rathbun Street, Woonsocket, Rhode Island is referred to in several records as 288 or 292 Rathbun Street. The addresses 288, 290, and 292 Rathbun Street all belong to one building, and the City of Woonsocket's assessor's office refers to the property as 290 Rathbun Street.

6. On January 17, 2001, the Rhode Island Department of Health ("RIDOH") issued a Notice of Violation ("NOV") under Rhode Island's Lead Poisoning Prevention Act to Respondent for lead hazard violations in 92 Benefit Street, Unit 2 and ordered abatement of the violations. The violations included lead hazards from a rear hall, exterior siding/trim, and soil. These areas are considered common areas under 40 C.F.R. § 745.103.
7. A Certification of Lead-Safe Status (interior only) dated March 27, 2001, was issued by RIDOH and a Certification of Lead-Safe Status (exterior and soil dated May 13, 2003), and was issued by RIDOH.
8. Unit 2 at 288 Rathbun Street in Woonsocket, Rhode Island was subject to a lead inspection on December 28, 1999. From this inspection, an Environmental Lead Inspection Report ("ELD Report") was generated.
9. On January 25, 2000, RIDOH issued a NOV under Rhode Island's Lead Poisoning Prevention Act to Respondent for lead hazard violations in 288 Rathbun Street, Unit 2 Left and ordered abatement of the violations. The violations included lead hazards from common stairwells and porches, exterior trim and soil. These areas meet the definition of common areas under 40 C.F.R. § 745.103.
10. On March 21, 2001, a certification of Lead-Safe Status (interior only) was issued, and on October 22, 2001, a Certification of Lead-Safe Status (exterior and soil) was issued by RIDOH.
11. Section 107(a)(4) of the Disclosure Rule 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. This requirement includes common areas, defined in the Disclosure Rule as "portion[s] of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences." 40 C.F.R. § 745.103.

12. The RIDOH notices and certificates, and ELD and RWE Reports referred to in paragraphs 5 through 10 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).
13. These records were "available" to Respondent within the meaning of 40 C.F.R. § 745.103 prior to November 2006.
14. On or about November 5, 2006, Respondent leased 92 Benefit Street, Fourth Floor to one tenant.
15. On or about October 27, 2007, Respondent leased 290 Rathbun Street, Third Floor rear (part of the 288-292 Rathbun Street property) to two tenants.
16. On or about January 1, 2008, Respondents leased 290 Rathbun Street, Third Floor rear (part of the 288-292 Rathbun Street property) to two tenants.
17. On or about April 13, 2008, Respondent leased 92 Benefit Street, First Floor to two tenants.
18. Respondent failed to provide available records or reports pertaining to the presence of lead based paint or lead based paint hazards in the target housing to the lessees listed in paragraphs 13-16 above, before these lessees became obligated under contracts to lease target housing from the Respondent, as required by 40 C.F.R. § 745.107(a) (4), and therefore, Respondent violated 40 C.F.R. § 745.107(a) (4) on four occasions.

19. Complainant requested information from Respondent regarding the ages of children living in the apartment units listed in paragraphs 13-16 above in a letter dated June 24, 2008 and a subpoena dated September 9, 2008. Respondent failed to respond to either of these requests.
20. Complainant filed the Complaint alleging four violations of 40 C.F.R. § 745.107(a)(4) with the Regional Hearing Clerk on January 19, 2010.
21. The Complaint was served on Respondent by first class certified mail, in accordance with Rule 22.5 of the Consolidated Rules of Practice, 40 C.F.R. § 22.5.
22. Respondent signed a receipt for delivery of the Complaint on January 22, 2010.
23. Respondent has not filed an answer to the Complaint.
24. Pursuant to Rule 22.17 (a) of the Consolidated Rules of Practice, 40 C.F.R. Part 22.17(a), a party may be found in default upon the failure to file a timely answer to a complaint. Default by a respondent constitutes an admission of the facts alleged in the complaint and a waiver of the right to contest such facts.
25. Complainant sent to the Respondent by certified mail on September 10, 2010, a copy of a Motion for Default Order stating that the Respondent had failed to file a timely answer to the Complaint and requesting a penalty of $30,960.00.
26. Respondent has not filed a response to the Motion for Default Order.
27. 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.

DETERMINATION OF CIVIL PENALTY AMOUNT

Complainant requests the assessment of a penalty of $30,960.00 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.[2] As these violations occurred between November 2006 and April 2008[3], the penalty authorized for assessment is up to $11,000 per violation.

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). EPA has issued guidelines for penalties under TSCA that incorporate the statutory factors listed above in a document titled, "*Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), dated December 2007 and updated by 73 Fed. Reg. 75340 (Dec. 11, 2008). The ERPP considers the risk factors for exposure to lead-based paint and lead-based paint hazards.

I have considered the statutory criteria at 15 U.S.C. § 2615(a) (2) (B) and the guidance of the ERPP in light of the facts of this case, and have found that the proposed penalty of $30,960.00 is an appropriate penalty.

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

---

[2] For violations occurring after January 12, 2009, the penalty for each violation shall be no more than $16, 000. 73 Fed. Reg. 75340 (December 11, 2008).

[3] See paragraphs 14 – 17 above.

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.

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. The record in this case supports a finding that Respondent's failure to provide the lessees the records referred to in paragraphs numbered 5 through 10 above, resulted in a high probability of impairing the ability of the lessees to assess the potential for exposure to lead-based paint. Without this information, the tenants could not accurately assess the potential for exposure to lead-based paint hazards. Therefore, it is appropriate to categorize such violations as Circumstances Level 1 for purposes of calculating the penalty.

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. "Extent" is determined by two facts: the age of any children living in the target housing at the time of the lease, and whether any pregnant women live in the target housing. The ERPP provides that where the age of the youngest individual residing in target housing is not known that the EPA may use the "significant" extent factor for purposes of calculating its penalty. At this time, the ages of any children residing in the target housing units at issue are not known to Complainant despite its attempts to obtain this information.

The "nature," "circumstance," and "extent" factors are incorporated into the "Gravity Based Penalty Matrix" of the ERPP to determine the gravity-based penalty amount. The record in this case supports a finding that all Respondent's violations are considered "significant" in extent under the ERPP. The gravity-based penalty for a violation at the Level I circumstance level and with a "significant" extent warrants a penalty of $7,740.00. Four such violations result in a penalty of $30,960.00.

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. According to the Complainant's Memorandum in Support of Motion for Default Order, the Respondent has not filed an answer or made any response to the Complaint. The record contains several facts that may indicate the financial ability of the Respondent to pay the penalty, including foreclosure by the Federal National Mortgage Association on the 92 Benefit Street property. In addition, Respondent lost ownership of the property at 290 Rathbun

Street for a period of time due to a tax lien sale, although the Respondent was later able to recover ownership of this property through a right of redemption. However, Respondent has not filed an answer to the Complaint or documented a claim of any adverse economic impact or ability to pay. Absent any documentation from the Respondent regarding his ability to pay, there is insufficient information to determine 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 factors from further consideration.[4] I have considered the record in light of the remaining statutory penalty factors, including history of prior violations and other such matters as justice may require, and have found that no further adjustments to the gravity-based penalty are warranted.

The proposed penalty of $30,960.00 is an appropriate civil penalty to be assessed against Respondent because it is fully supported by the statutory factors under TSCA to determine a civil penalty. Four violations at the Level I circumstance level with a "significant" extent factor warrant this penalty. In assessing this penalty, I find persuasive the rationale for the calculation of the assessed penalty set forth in the Complaint and in the Complainant's Memorandum of Law filed in this proceeding and incorporate such rationale by reference into this Order.

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 $30,960.00 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.

---

[4] See *In re Spitzer Great Lakes*, 9 E.S.D/ 321 (EAB 2000) (quoting *In re New Waterbury*, 5 E.A.D. at 541 (EAB 1994).

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 is assessed and shall make payment of a penalty in the amount of $30,960.00.
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 $30,960.00, payable to "Treasurer of the United States of America." Respondents should note on these checks the docket number for this matter (EPA Docket No. TSCA-01-2010-0007). 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-01-2010-0007), 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, 37 C.F.R. § 901.9, and 40 C.F.R. § 13.11.

IT IS SO ORDERED.

December 13, 2011
Date

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 **John Laughter, Docket No. TSCA-01-2010-0007**, was served on the parties as indicated.

UPS

John Laughter
17 Gano Avenue
Johnston, RI 02919

E-mail

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

UPS

Cynthia Giles
Assistant Administrator or Enforcement and Compliance Assurance
US EPA
Ariel Rios Building
1200 Pennsylvania Ave. N.W.
Mail Code 2201A room 3204
Washington, DC 20460

Hand Delivered

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

Dated: December 13, 2011

Wanda I. Santiago
Paralegal/Regional Hearing Clerk
U.S. EPA Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109