

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

Received by  
EPA Region 1  
Hearing Clerk

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In the Matter of: )	
)	<b>Docket No. TSCA-01-2022-0027</b>
)	
Charles Bridge, LLC )	
P.O. Box 628 )	
Old Lyme, CT 06371 )	<b>MEMORANDUM IN SUPPORT OF</b>
)	<b>MOTION FOR</b>
)	<b>DEFAULT ORDER</b>
Respondent. )	
)	
Proceeding under Section 16(a) of the )	
Toxic Substances Control Act, )	
15 U.S.C. § 2615(a) )	
_____ )	

**MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT ORDER**

The Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), has moved for the issuance of an order finding that Respondent, Charles Bridge, LLC (“Respondent”), is in default in this matter, finding that Respondent violated Section 409 of Toxic Substances Control Act (“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”) and assessing a penalty of \$56,109.

The Complaint was filed on February 22, 2022, and service was completed on February 23, 2022. To date, Respondent has not filed an Answer, and has not requested an extension of time for filing an Answer. In accordance with Rule 22.17(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation

/Termination or Suspension of Permits (“Rules of Practice”), the failure to file a timely Answer to the complaint constitutes an admission of the facts alleged in the complaint and grounds for an assessment of the proposed penalty of \$56,109. For the reasons discussed below, Respondent should be found to be in default pursuant to Section 22.17(a) of the Rules of Practice, 40 C.F.R. § 22.17(a), and should be assessed the proposed penalty of \$56,109.

#### I. Respondent Should Be Found in Default

The Rules of Practice provide that a party may be found to be in default after motion, upon failure to file a timely answer to the complaint. 40 C.F.R. § 22.17.

The Complaint in this action was filed on February 22, 2022. *See* Complaint and Notice of Opportunity for Hearing, In re Charles Bridge, LLC, No. TSCA-01-2022-0027 (“Complaint”) (attached as Exhibit 1) and Certificate of Service (February 22, 2022) (attached as Exhibit 2). In the Complaint, EPA alleged that Respondent violated federally enforceable provisions of TSCA Section 409 and the Act, and that Respondent is therefore subject to penalties under TSCA Section 16, 15 U.S.C. § 2615. Complaint. Para. 2. The Complaint was served on Respondent’s attorney, Nolan H. Tanous, Esq., by electronic mail and next-day express mail hand-delivery via United Parcel Service of America, Inc. Attorney Tanous’s office signed for the receiving package on February 23, 2022. *See* 40 C.F.R. § 22.5 (b)(1); *see also* Standing Order: Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents (June 19, 2020)(Exhibit 3); E-mail from Peter DeCambre, Enforcement Counsel, EPA, to Nolan H. Tanous, Esq., (February 23, 2022) and a copy of United Parcel Service of America, Inc. notification of electronic mail card indicating the Complaint package was left at the front desk of Attorney Tanous’s office and signed for by Mr. or Ms. Johanson on

February 23, 2022 (both attached as Exhibit 4). Accordingly, service was completed on February 23, 2022. *See* 40 C.F.R. § 22.7(c).

Respondent has not filed an answer, and the 30-day period for filing an answer has lapsed. *See* 40 C.F.R. § 22.15(a). Since Respondent has not filed a timely answer to the Complaint, Respondent should be found in default. Such default constitutes an admission of all facts alleged in the Complaint and a waiver of any rights to contest the factual allegations of the Complaint. *See* 40 C.F.R. § 22.17(a).

## II. Respondent's Actions Violated TSCA and the Act.

The following factual and legal grounds, as required by 40 C.F.R. § 22.17(b), support a finding that the Complaint establishes a prima facie case that Respondent violated TSCA Section 409, the Act and the Disclosure Rule.

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 considered in the rental of homes and apartments. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart F.

Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act and the Disclosure 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.

Pursuant to 40 C.F.R. § 745.103, “lessor” means any entity that offers target housing for lease, rent, or sublease. 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. Include, either within or as an attachment to the lease contract, a Lead Warning Statement;
- c. Ensure that the contract to lease includes a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof; and,
- d. Ensure that the contract to lease target housing includes a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available.

See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1) and 745.113(b)(1)-(3).

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. 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.

Respondent is a limited liability company organized under the laws of the State of Maine. Respondent owns and manages multiple residential buildings in Bangor, Maine, including a unit located at 308 Union Street, Bangor, Maine. Complaint, Para. 11. At times relevant to the allegations in the Complaint, Respondent owned and offered for lease a residential apartment

unit located at 308 Union Street, Bangor, Maine. *Id.* Para. 12. One child, age 1, was resident. *Id.* Pursuant to 40 C.F.R. § 745.103, Respondent was and is the “lessor” of the unit located at 308 Union Street, Bangor, Maine. *Id.* Para. 13. The 308 Union Street property is target housing as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. *Id.* Para. 14. Furthermore, this residential unit does not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)). *Id.*

On September 16, 2020, EPA issued an Information Request Letter (“IRL”) to Respondent. *Id.* Para. 15. The IRL sought records and other information relating to Respondent’s compliance with Disclosure Rule requirements. *Id.*

On September 30, 2020, in response to the IRL, Respondent submitted information regarding the 308 Union Street residential property. *Id.* Para. 16. Respondent also provided EPA with leases, inspection reports, and disclosure forms for Respondent’s other properties. *Id.* Further EPA’s investigation indicated a child, age 1, resided in the 308 Union Street residential property at the time of Respondent’s response to the IRL. *Id.*

On or about March 24, 2020, a lessee became obligated to rent an apartment at 308 Union Street. Lease Agreement. (Attached as Exhibit 5). In a notarized affidavit, the lessee states Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet and information pertaining to lead-based paint in the target housing before the lessee entered into a contract to lease the target housing. Lessee Statement. (Attached as Exhibit 6).

Based upon EPA’s review of information and documents obtained from Respondent, and EPA’s subsequent investigation of the facts and circumstances underlying the violations, EPA has identified the violations of TSCA, the Act and the Disclosure Rule described below.

Complaint, Para. 17.

A. Count One: Failure to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet

As noted above, EPA has offered factual and legal support that Respondent failed to provide the lessee of 308 Union Street who became obligated to rent the property on or about March 24, 2020, with an EPA-approved lead hazard information pamphlet before the tenant entered into a contract to lease target housing.

Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor is required to provide a lessee, before the lessee is obligated under any contract to lease target housing, with an EPA-approved lead hazard information pamphlet (*Protect Your Family From Lead in Your Home*) or an equivalent pamphlet that has been approved for use in particular states by EPA. Complaint, Para. 20. The 308 Union Street property is target housing as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103 and this residential unit does not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)). *Id.* Para. 14. In a notarized affidavit, the lessee states Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet and lead disclosure information before the lessee entered into a contract to lease the 308 Union Street property. Lessee Statement. Thus, Respondent failed to provide the lessee who became obligated to rent the 308 Union Street property, with an EPA-approved lead hazard information pamphlet before the lessee entered into a contract to lease target housing. Complaint, Para. 21. Respondent's failure to provide the lessee of target housing with an EPA-approved lead hazard information pamphlet prior to the lessee becoming obligated under a contract to lease target housing violated 40 C.F.R. § 745.107(a)(1) and TSCA Section 409, 15 U.S.C. § 2689, and is a violation for which penalties may be assessed pursuant to Section 16 of TSCA. *Id.* Paras. 18 and 22.

B. Count II: Failure to Include a Lead Warning Statement

As noted above, EPA has offered factual and legal support that Respondent failed to provide the lessee of 308 Union Street, who became obligated to rent the property on or about March 24, 2020, with a Lead Warning Statement within, or as an attachment to, the contract.

Pursuant to 40 C.F.R. § 745.113(b)(1), a lessor must ensure that before the lessee is obligated under any contract to lease target housing, each contract to lease target housing includes a Lead Warning Statement within, or as an attachment to, the contract. *Id.* Para. 24. In a notarized affidavit, the lessee states Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet and lead disclosure information before the lessee entered into a contract to lease the 308 Union Street property. Lessee Statement. Thus, Respondent failed to include a Lead Warning Statement within or attached to its contract with the lessee who became obligated to rent the 308 Union Street property. Complaint Para. 25. Respondent's failure to include a Lead Warning Statement within or attached to a lease contract to lease target housing violated 40 C.F.R. § 745.113(b)(1) and TSCA Section 409 and is a violation for which penalties may be assessed pursuant to Section 16 of TSCA. *Id.* Paras. 18 and 26.

C. Count III: Failure to Disclose the Presence of Known Lead-Based Paint/Hazards or Indicating No Knowledge Thereof

As noted above, EPA has offered factual and legal support that Respondent failed to disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicate no knowledge of the presence of lead-based paint and/or lead-based paint hazards to the lessee of 308 Union Street who became obligated to rent the property on or about March 24, 2020.

Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include as an attachment to or within the lease contract a statement by the lessor 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. *Id.* Para. 28. In a notarized affidavit, the lessee states Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet and lead disclosure information before the lessee entered into a contract to lease. Lessee Statement. Thus, Respondent failed to include, as an attachment to or within the lease contract with the lessee who became obligated to rent the 308 Union Street property, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating the lack of knowledge of the presence of lead-based paint and/or lead-based paint hazards. Complaint, Para. 29. Respondent's failure to include as an attachment to or within the lease contract, a statement by the lessor 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 violated 40 C.F.R. § 745.113(b)(2), and TSCA Section 409, and is a violation for which penalties may be assessed pursuant to Section 16 of TSCA. *Id.* Paras. 18 and 30.

**D. Count IV: Failure to Include a List of Records/Reports Pertaining to Lead-Based Paint or Lead-Based Paint Hazards in The Housing, or Failure to Indicate That No Such Records Exist.**

As noted above, EPA has offered factual and legal support that Respondent failed to include, within or attached to the contract to lease the 308 Union Street property on or about March 24, 2020, a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or an indication that no such records or reports are available.

Pursuant to 40 C.F.R. § 745.113(b)(3), a lessor must ensure that before a lessee is obligated under any contract to lease target housing, the contract to lease target housing includes



within or as an attachment to the contract a list of any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased or, if no such records or reports are available, the lessor shall so indicate. *Id.* Para. 32.

In a notarized affidavit, the lessee states Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet and lead disclosure information before the lessee entered into a contract to lease. Lessee Statement. Thus, Respondent did not include, within or attached to the contract to lease the 308 Union Street property, a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or an indication that no such records or reports are available. *Id.* Para. 33. Respondent's failure to include a list of records or reports pertaining to lead-based paint or lead-based paint hazards, or a statement indicating none is available, within or attached to a lease contract to rent target housing violated 40 C.F.R. § 745.113(b)(3), and TSCA Section 409, and is a violation for which penalties may be assessed pursuant to Section 16 of TSCA. *Id.* Paras. 18 and 34.

### **III. A Penalty of \$56,109 Should be Assessed**

Complainant recommends the imposition of a \$56,109 civil penalty against Respondent. Complaint, Para. 38. The following legal and factual grounds, as required by 40 C.F.R. § 22.17(b), support a finding that the proposed penalty amount is appropriate in light of the penalty assessment criteria of TSCA Section 16, 15 U.S.C. § 2615, as applied to the circumstances of this case. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires Complainant to 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 the ability to continue to do business, any history of such prior violations, the degree of culpability, and other

such matters as justice may require. 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 "ERPP"). The ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. (*See* Attachment 1 to the Complaint for an explanation of the rationale for the proposed penalty.)

#### IV. Conclusion

The Complainant requests that the Regional Judicial Officer issue an order finding that Respondent is in default, that Respondent violated the federally enforceable provisions of TSCA Section 409 and the Act, and that an appropriate penalty be assessed in the amount of \$56,109.

Respectfully submitted,

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Peter DeCambre  
Senior Enforcement Counsel  
Office of Regional Counsel  
U.S. EPA, Region 1