



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

MAR - 6 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John J. Varecka, President
CRM Realty Management, Inc.
117 West Liberty Street
Rome, New York 13440

Re: In the Matter of **CRM Realty Management, Inc.**
Docket No. TSCA-02-2012-9268

Dear Mr. Varecka:

Enclosed is the Complaint and Notice of Opportunity for Hearing (the Complaint) and supporting documents in the above-referenced proceeding. This Complaint alleges violations of the Toxic Substances Control Act (TSCA), Section 409, and regulations promulgated pursuant to TSCA set forth at 40 C.F.R. Part 745 Subpart F.

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within *thirty (30)* days of your receipt of the enclosed Complaint to the Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these SEPs are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dore LaPosta".

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

In the Matter of CRM Rental Management, Inc.
Docket No. TSCA-02-2012-9268

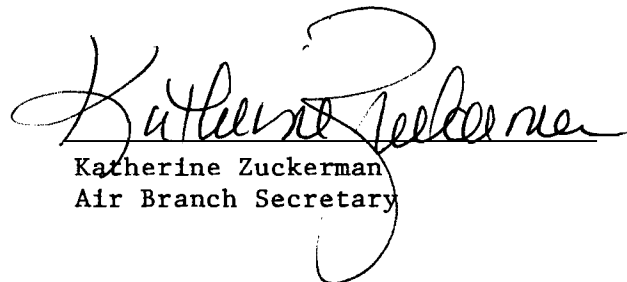
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number TSCA-02-2012-9268, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

John J. Varecka
President
CRM Rental Management, Inc.
117 West Liberty Street
Rome, New York 13440

I hand carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: 3/12/12
New York, New York


Katherine Zuckerman
Air Branch Secretary

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

----- X
In the Matter of :
 :
CRM Rental Management, Inc., :
 :
 Respondent. :
 :
 Proceeding under Section 16(a) of :
 the Toxic Substances Control Act. :
----- X

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No.
TSCA-02-2012-9268

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 MAR 12 P 2:18
REGIONAL HEARING
CLERK

COMPLAINT

This is a civil administrative action instituted pursuant to § 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 *et seq.* This Complaint serves notice of Complainant’s preliminary determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745 Subpart F, which were promulgated pursuant to § 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, codified at 42 U.S.C. § 4851 *et seq.* (hereinafter “§ 1018”).

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (“EPA”), Region 2, has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

1. Respondent is CRM Rental Management, Inc. (hereinafter “Respondent”).
2. Respondent’s primary place of business is located at 117 West Liberty Street, PO Box 269, Rome, New York 13440.
3. Respondent is subject to the regulations and requirements pertaining to Lead-Based Paint Disclosure promulgated pursuant to 42 U.S.C. § 4852d, and set forth at 40 C.F.R. Part 745, Subpart F.
4. On or about April 14, 2009, duly designated representatives of EPA conducted an inspection at the offices of CRM Rental Management, Inc., at the abovementioned address in Rome, NY. (Hereinafter referred to as “the Inspection”). The Inspection was conducted to determine Respondent’s compliance with the EPA regulations pertaining to Lead-Based Paint Disclosure, 40 C.F.R. Part 745, Subpart F.
5. On or about May 14, 2009, duly designated representatives of EPA conducted the Inspection at the offices of the Oxford Towne Apartments in New Hartford, NY. The inspectors met with Mr. Davis Yohe, an Oxford Towne employee. Mr. Yohe

confirmed that the Oxford Towne properties were managed by CRM Rental Management, Inc. of Rome, NY. (Hereinafter, both the CRM inspection and the Oxford Towne inspection are collectively referred to as “the Inspection.”)

Foxwood Apartments I Property Lease Agreements

6. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “agent”, as that term is defined in 40 C.F.R. § 745.103, for the property known as Foxwood Apartments I, located at 8225 Bielby Road, Rome, NY 13440 (hereinafter the “Foxwood property”).
7. The Foxwood property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
8. The Foxwood property consists of approximately 28 “residential dwelling” units within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
9. The Foxwood property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103, and was built in 1973.
10. On or about April 26, 2005, Jeanette Hall entered into a contract to lease Apartment #1 in the Foxwood property from Respondent. This contract was extended on April 7, 2009 for the period between May 1, 2009 and April 30, 2010.
11. On or about March 11, 2009, Brian Boersma entered into a contract to lease Apartment #2 in the Foxwood property from Respondent.
12. On or about July 27, 2006, Bruce Neil entered into a contract to lease Apartment #3 in the Foxwood property from Respondent. This contract was extended on June 30, 2008 for the period between August 1, 2008 and July 31, 2009.
13. On or about August 12, 2008, Theresa Darcangelo entered into a contract to lease Apartment #4 in the Foxwood property from Respondent.
14. On or about November 1, 2001, John Capanna entered into a contract to lease Apartment #5 in the Foxwood property from Respondent. This contract was extended on November 18, 2008 for the period between December 1, 2008 and November 30, 2009.
15. On or about March 7, 2008, John C. Brooks and Lorri Martinez entered into a contract to lease Apartment #7 in the Foxwood property from Respondent. This contract was extended on February 25, 2009 for the period between April 1, 2009 and March 31, 2010.
16. On or about January 28, 2009, Shaleik & Regina Higgs entered into a contract to lease Apartment #8 in the Foxwood property from Respondent.
17. On or about March 30, 2002, Helen Brown entered into a contract to lease Apartment #9 in the Foxwood property from Respondent. This contract was extended on March 2, 2009 for the period between April 1, 2009 and March 31, 2010.
18. On or about January 26, 2009, Shameem Wahab entered into a contract to lease

Apartment #10 in the Foxwood property from Respondent.

19. On or about May 1, 2008, Jamie Kramer entered into a contract to lease Apartment #13 in the Foxwood property from Respondent. This contract was extended on April 5, 2009 for the period between May 1, 2009 and November 30, 2009, with the addition of a second tenant, Edward Kramer.

North George Street Apartments Property Lease Agreements

20. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “agent”, as that term is defined in 40 C.F.R. § 745.103, for the property known as the North George Street Apartments, located at 119 N. George Street, Rome, NY 13440 (hereinafter the “North George Street property”).
21. The North George Street property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
22. The North George Street property consists of 25 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
23. The North George Street property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103, and was built between 1900 and 1975.
24. On or about July 2, 2007, Dr. Cyrille P. Cucio entered into a contract to lease Apartment #1 at 804 North George Street, in the North George Street property, from Respondent. This contract was extended on July 11, 2008 for the period between August 1, 2008 and July 31, 2009.
25. On or about July 30, 2007, Jane M. Frate entered into a contract to lease Apartment #5 at 804 North George Street, in the North George Street property, from Respondent. This contract was extended on July 1, 2008 for the period between August 1, 2008 and July 31, 2009.
26. On or about January 27, 2009, Jasmine Gooch entered into a contract to lease Apartment #7 at 804 North George Street, in the North George Street property, from Respondent.
27. On or about October 9, 2008, Christina Trainham entered into a contract to lease Apartment #3 at 808 North George Street, in the North George Street property, from Respondent.
28. On or about August 31, 2007, Linda Guenther entered into a contract to lease Apartment #2 at 808 North George Street, in the North George Street property, from Respondent. This contract was extended on October 17, 2008 for the period between September 1, 2008 and August 31, 2009.
29. On or about June 20, 2008, Edward D. Kweri entered into a contract to lease an apartment at #812 North George Street, in the North George Street property, from Respondent.
30. On or about February 27, 2008, Kimberley Lassonde entered into a contract to lease Apartment #1 at 207 Maple Street, in the North George Street property, from

Respondent. This contract was extended on February 24, 2009 for the period between March 1, 2009 and February 29, 2010 (Month to Month Basis).

31. On or about August 31, 2007, Doris Reber entered into a contract to lease Apartment #3 at 207 Maple Street, in the North George Street property, from Respondent. This contract was extended on August 28, 2008 for the period between October 1, 2008 and September 30, 2009.
32. On or about November 20, 2006, Carrie Scherzi entered into a contract to lease Apartment #4 at 207 Maple Street, in the North George Street property, from Respondent. This contract was extended on December 5, 2008 for the period between January 1, 2009 and December, 2009.
33. On or about January 1, 2008, Brian Monahan entered into a contract to lease Apartment #5 at 207 Maple Street, in the North George Street property, from Respondent. This contract was extended on December 29, 2008 for the period between January 1, 2009 and December 31, 2009.
34. On or about August 31, 2007, Phyllis White entered into a contract to lease Apartment #6 at 207 Maple Street, in the North George Street property, from Respondent. This contract was extended on August 23, 2008 for the period between October 1, 2008 and September 30, 2009.
35. On or about December 28, 2006, Robert Vinneau entered into a contract to lease an apartment at #209 Maple Street, in the North George Street property, from Respondent. This contract was extended on December 23, 2008 for the period between January 1, 2009 and December 31, 2009.

Oxford Towne Apartments (Oxford Apartments) Property Lease Agreements

36. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “agent”, as that term is defined in 40 C.F.R. § 745.103, for the property known as the Oxford Towne Apartments, located at 14 Darby Court, New Hartford, NY 13413 (hereinafter the “Oxford Apartments”).
37. The Oxford Apartments property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
38. The Oxford Apartments property consists of 75 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
39. The Oxford Apartments property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103, and was built in portions in 1968 and 1972.
40. On or about August 7, 2008, Nicholas and Trudy Sheldon entered into a contract to lease Apartment unit #A-10, 127 Oxford Road, of the Oxford Apartments property, from Respondent.
41. On or about October 1, 2008, Phyllis DuRoss entered into a contract to lease Apartment unit # 2- Barnum of the Oxford Apartments property from Respondent.

42. On or about July 14, 2008, Maureen Casile entered into a contract to lease Apartment unit #4 Barnum of the Oxford Apartments property, from Respondent. This lease was signed by Jaclyn E. Thornley.
43. On or about May 13, 2008, Norma Cutler entered into a contract to lease Apartment unit #5 Barnum of the Oxford Apartments property, from Respondent.
44. On or about June 23, 2008, Sarmad Siddiqui entered into a contract to lease Apartment unit #9 Barnum of the Oxford Apartments property, from Respondent.
45. On or about July 24, 2008, Mr. and Mrs. Hans Kunz entered into a contract to lease Apartment unit Chelsey #4 of the Oxford Apartments property, from Respondent.
46. On or about October 23, 2008, Michelle Michalkovic entered into a contract to lease Apartment unit Darby #9 of the Oxford Apartments property, from Respondent.
47. On or about March 25, 2008, Paul Mickelson entered into a contract to lease Apartment unit Darby #11 of the Oxford Apartments property, from Respondent.
48. On or about June 23, 2008, Balaji Janardhanan entered into a contract to lease Apartment unit Essex #4 of the Oxford Apartments property, from Respondent.
49. On or about November 1, 2008, Philip Amodio entered into a contract to lease Apartment unit #F10 of the Oxford Apartments property, from Respondent.
50. On or about May 13, 2008, Anne Giacobelli entered into a contract to lease Apartment unit #F1 of the Oxford Apartments property from Respondent.

Oxford Towne Villas (Oxford Villas) Property Lease Agreements

51. Upon information and belief, Respondent is, and at all times relevant to this Complaint was, the “agent”, as that term is defined in 40 C.F.R. § 745.103, for the property known as Oxford Towne Villas, located at 14 Darby Court, New Hartford, NY 13413 (hereinafter the “Oxford Villas”).
52. The Oxford Villas property is “residential real property” within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24).
53. The Oxford Villas property consists of 42 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
54. The Oxford Villas property is “target housing” within the meaning of § 1004(27) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(27), and 40 C.F.R. § 745.103.
55. On or about January 14, 2009, Diane Davis entered into a contract to lease Apartment unit #1 Oxford Towne Court, of the Oxford Villas property, from Respondent.
56. On or about December 1, 2007, Arley Lish entered into a contract to lease Apartment unit #5 Oxford Towne Court, of the Oxford Villas property, from Respondent.

57. On or about February 8, 2008, Ann McGuirl entered into a contract to lease Apartment unit #11 Oxford Towne Court, of the Oxford Villas property from Respondent.
58. On or about March 25, 2009, Roxanne Pollack entered into a contract to lease Apartment unit #19 Oxford Towne Court, of the Oxford Villas property, from Respondent.
59. On or about February 14, 2009, Karleen M. Markowicz entered into a contract to lease Apartment unit #23 Oxford Towne Court, of the Oxford Villas property from Respondent.
60. On or about February 3, 2009, Rita Saladin entered into a contract to lease Apartment unit #29 Oxford Towne Court, 137 Oxford Road, of the Oxford Villas property, from Respondent.
61. On or about June 12, 2008, Sharon A. Montana entered into a contract to lease Apartment unit #31 Oxford Towne Court, of the Oxford Villas property, from Respondent.
62. On or about February 13, 2009, Jeanne S. Youngkrans entered into a contract to lease Apartment unit #41 Oxford Towne Court, of the Oxford Villas property, from Respondent.
63. On or about February 1, 2009, Toni J. Thompson entered into a contract to lease Apartment unit #114 Harrogate Road, of the Oxford Villas property, from Respondent.
64. On or about August 13, 2008, Peter and Julia Schenk entered into a contract to lease Apartment unit #88 Harrogate Road, of the Oxford Villas property, from Respondent.
65. Each of the persons leasing the apartments in paragraphs 10 – 19, 24 – 35, 40 – 50, and 55 - 64, above, is a “lessee” of target housing as that term is defined at 40 C.F.R. § 745.103.
66. None of the lease transactions listed in paragraph 65, above, constitutes an exempt transaction pursuant to 40 C.F.R. § 745.101.

COUNT 1

Lead Warning Statement

67. Paragraphs 1 through 66 are realleged and incorporated as if fully set forth herein.
68. Under 40 C.F.R. § 745.113(b)(1), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a “Lead Warning Statement” which is set forth in the regulation.
69. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
70. Upon information and belief, Respondent acted as the agent for the lease of target housing units listed in paragraphs 10 – 19, 24 – 35, 40 – 50, and 55 - 64, above.

71. For the real estate transactions for the rental of the target housing units described in paragraph 70 above, the contract to lease did not contain a Lead Warning Statement nor was the statement attached to the contract for lease.
72. Failure to include a Lead Warning Statement in the contract to lease is a violation of 40 C.F.R. § 745.113(b)(1).
73. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(1) or to personally ensure compliance with 40 C.F.R. § 745.113(b)(1) constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2) which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 2

Statement by the Lessor Disclosing Known Lead-Based Paint

74. Paragraphs 1 through 66 are realleged and incorporated as if fully set forth herein.
75. Under 40 C.F.R. § 745.113(b)(2), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence.
76. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
77. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 10 – 19, 24 – 35, 40 – 50, and 55 - 64, above.
78. For the real estate transactions for the rental of the apartments described in paragraph 77, above, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence was not included within nor attached to the contracts to lease, at the time of leasing.
79. Failures to include or attach a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of such presence to the contract to lease are violations of 40 C.F.R. § 745.113(b)(2).
80. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(2), or to personally ensure compliance with 40 C.F.R. § 745.113(b)(2), constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 3

List of Records or Reports Pertaining to Lead-Based Paint

81. Paragraphs 1 through 66 are realleged and incorporated as if fully set forth herein.
82. Under 40 C.F.R. § 745.113(b)(3), the lessor shall include in each contract to lease target housing, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or an indication that no such records or reports are available.
83. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
84. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 10 – 19, 24 – 35, 40 – 50, and 55 - 64, above.
85. For the real estate transactions for the rental of the apartments described in paragraph 84, above, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessees, or an indication that no such records or reports are available, was not attached to the contracts to lease, at the time of leasing.
86. Failures to include or attach to the contract to lease a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards that have been provided to the lessee, or to indicate that no such records or reports are available, are violations of 40 C.F.R. § 745.113(b)(3).
87. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(3), or to personally ensure compliance with 40 C.F.R. § 745.113(b)(3), constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 4

Lessee's Receipt of Information

88. Paragraphs 1 through 66 are realleged and incorporated as if fully set forth herein.
89. Under 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming the receipt of: (1) the lessor's statement disclosing the presence of known lead-based paint (or indicating no knowledge); (2) the list of any records or reports available to the lessor pertaining to lead-based paint; and (3) the lead hazard information pamphlet.
90. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.

91. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 10 – 19, 24 – 35, 40 – 50, and 55 - 64, above.
92. For the real estate transactions for the rental of the apartments described in paragraph 91, above, the contracts did not contain within the contracts nor as an attachment, the statement described in paragraph 89, above, at the time of leasing.
93. Failures of the contracts to contain the statement described in paragraph 89 above, violations of 40 C.F.R. § 745.113(b)(4).
94. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(4) or to personally ensure compliance with 40 C.F.R. § 745.113(b)(4), constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

COUNT 5

Lessor, Agent and Lessee Certification Statement

95. Paragraphs 1 through 66 are realleged and incorporated as if fully set forth herein.
96. Under 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include, as an attachment or within the contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.
97. Pursuant to 40 C.F.R. § 745.115, each agent is required to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113 or to personally ensure compliance with 40 C.F.R. § 745.113.
98. Upon information and belief, Respondent acted as the agent for the lease of target housing apartments listed in paragraphs 10 – 19, 24 – 35, 40 – 50, and 55 - 64, above.
99. For the real estate transactions for the rental of the apartments described in paragraph 98, above, the contracts did not contain signatures of the lessor, agents, or lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, at the time of leasing.
100. Failures of the contracts to include the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature, are violations of 40 C.F.R. § 745.113(b)(6).
101. Respondent's failures to ensure that the lessor has performed all of the activities required under 40 C.F.R. § 745.113(b)(6), or to personally ensure compliance with 40 C.F.R. § 745.113(b)(6), constitutes failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. § 4852d(b)(5) and of § 409 of TSCA, 15 U.S.C. § 2689.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with § 1018 and 40 C.F.R. § 745.118(f), which authorize the assessment of a civil penalty under TSCA § 16 in the

COUNT 3: List of Records or Reports Pertaining to Lead-Based Paint

Circumstance Level: **5**

Total number of violations: **43**

Extent Category: Minor: **43**

Penalty Per Violation: Minor after 1/12/09 = \$ 290
Minor after 3/15/04 = \$ 260

15 Minor violations x \$ 290 = \$ 4,350

28 Minor violations x \$ 260 = \$ 7,280

Total Proposed Assessment for this Count: \$ 11,630

COUNT 4: Lessee's Receipt of Pamphlet and Information

Circumstance Level: **4**

Total number of violations: **43**

Extent Category: Minor: **43**

Penalty Per Violation: Minor after 1/12/09 = \$ 580
Minor after 3/15/04 = \$ 520

15 Minor violations x \$ 580 = \$ 8,700

28 Minor violations x \$ 520 = \$14,560

Total Proposed Assessment for this Count: \$ 23,260

COUNT 5: Lessor, Agent and Lessee Certification Statement

Circumstance Level: **6**

Total number of violations: **43**

Extent Category: Minor: **43**

Penalty Per Violation: Minor after 1/12/09 = \$150
Minor after 3/15/04 = \$130

15 Minor violations x \$150 = \$ 2,250

28 Minor violations x \$130 = \$ 3,640

Total Proposed Assessment for this Count: \$ 5,890

TOTAL PROPOSED PENALTY **\$ 144,140**

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," and are codified at 40

C.F.R. Part 22. A copy of these rules accompanies this “Complaint and Notice of Opportunity for Hearing” (hereinafter referred to as the “Complaint”).

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent’s failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). See generally Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. See Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: “A civil penalty for a violation of Section 2614 or 2689 of this title [15 U.S.C. § 2614, § 2689] shall be assessed by the Administrator by an order made on the record after opportunity...for a hearing in accordance with Section 554 of Title 5 [5 U.S.C. § 554].”

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA order. See 15 U.S.C. § 2615(a)(3), which

states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). 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. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the

proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Melva J. Hayden, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866
(212)-637-3230

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE


Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

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

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA attorney identified on the previous page.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

DATE: 3/16/12



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2