



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 03 2010

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 9798

Ms. Kristin Gillan
4848 North Lydell Avenue, Apt. 108
Milwaukee, Wisconsin 53217

Re: In the Matter of Kenneth J. Kosmoski and Kristin Gillan, Docket No: **TSCA-05-2010-0006**

Dear Ms. Gillan:

Enclosed is a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Kenneth J. Kosmoski and Kristin Gillan under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 *et seq.*

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact Ann Coyle, Associate Regional Counsel at (312) 886-2248.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

cc: Kenneth Kosmoski
Carol Krigbaum



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 08 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 9811

Mr. Kenneth J. Kosmoski
1711 East Marion Street
Shorewood, Wisconsin 53211

Re: In the Matter of Kenneth J. Kosmoski and Kristin Gillan, Docket No: **TSCA-05-2010-0006**

Dear Mr. Kosmoski:

Enclosed is a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Kenneth J. Kosmoski and Kristan Gillan under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 *et seq.*

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact Ann Coyle, Associate Regional Counsel at (312) 886-2248.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

cc: Kristan Gillan
Carol Krigbaum

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Kenneth Kosmoski and Kristin Gillan)
Shorewood, Wisconsin)
Respondents.)
_____)

Docket No. TSCA-05-2010-0006
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

RECEIVED

FEB 03 2010

REGIONAL HEARING CLERK
USEPA
REGION 5

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondents are Kenneth Kosmoski and Kristin Gillan, individuals doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and

notification requirements for residential rentals and sales. Section 1018, 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. On March 6, 1996, EPA promulgated regulations codified at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of one to four residential dwellings must comply with the Disclosure Rule by December 6, 1996, pursuant to 40 C.F.R. § 745.102(b).

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

7. 40 C.F.R. § 745.103 defines target housing as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

8. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

9. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. 40 C.F.R. § 745.100 requires, among other things, that the lessor of target housing complete the required disclosure activities before a lessee is obligated under any contract to lease target housing.

11. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment to or within the contract: a Lead Warning Statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

12. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

13. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred from July 29, 1997, through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

General Allegations

14. Complainant incorporates paragraphs 1 through 13 of this Complaint as if set forth in this paragraph.

15. At all times relevant to this Complaint, Respondents owned a residential dwelling, consisting of two residential dwelling units, at 1709-1711 East Marion Street, Shorewood, Wisconsin (the property).

16. Respondents' property was constructed in 1925.

17. Respondents' property, and each apartment unit within the property, is "target housing" as defined in 40 C.F.R. § 745.103.

18. For the property located at 1709 East Marion Street, Shorewood, Wisconsin, Tax Key number 240-0141-000, property records for Milwaukee County, Wisconsin indicate that tax bills for tax years 2005 through 2007 were sent to Kenneth J. Kosmoski and Kristin M. Gillan Kosmoski as the taxpayers.

19. For property with Tax Key number 240-0141-000, publicly available documents from September 15, 2009, state the value of the property in 2007 and 2008 was approximately \$305,100.

20. On June 14, 2005, Respondent Kosmoski, on behalf of himself and Respondent Gillan, entered into a written lease agreement (contract) with individuals for the lease of Respondents' residential dwelling at 1709 East Marion Street, Shorewood, Wisconsin.

21. The individuals who entered into the contract to lease Respondents' residential dwelling at 1709 East Marion Street, Shorewood, Wisconsin, resided in the property from approximately July 15, 2005, through March 31, 2006.

22. The contract referenced in paragraph 20, above, covered a term of occupancy greater than 100 days.

23. Between June 15, 2005, and March 31, 2006, Respondents offered for lease their residential dwelling unit, and individuals entered into the contract on the date listed in paragraph 20, above, to lease that dwelling.

24. Respondents are "lessors," as defined in 40 C.F.R. § 745.103, because they offered the target housing referenced in paragraph 20, above, for lease.

25. The individuals who signed a lease to pay rent in exchange for occupancy of the residential dwelling, referenced in paragraph 20, above, became “lessees” as defined in 40 C.F.R. § 745.103.

26. On October 14, 2009, EPA advised Respondents by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint. If Respondents believed there were financial factors which bore on Respondents’ ability to pay a civil penalty, EPA asked Respondents to submit specific financial documents.

27. Respondent Kosmoski received the prefiling notice letter referenced in paragraph 26, above on October 22, 2009. Respondent Gillan received the prefiling notice letter referenced in paragraph 26, above, on or about October 17, 2009.

28. In response to these letters, in a telephone call with EPA on October 23, 2009, Respondents’ counsel asserted that Respondents are unable to pay the proposed penalty.

29. On October 23, 2009, EPA emailed to Respondents’ counsel an “Individual Ability to Pay” request form with instructions that both Respondents fill it out and return the forms to EPA.

30. On November 23, 2009, Respondents replied by letter to EPA’s October 14, 2009, prefiling letter with copies of the information Respondent Kosmoski currently provides his tenants and a certificate showing that Respondent Kosmoski completed the City of Milwaukee’s Landlord Training Program on October 10, 2009. The letter also asserted that Respondent Kosmoski routinely makes all required disclosures. The response letter did not assert an inability

to pay, nor did it include any documents or other factual information supporting an inability to pay claim.

31. On November 25, 2009, EPA contacted Respondents' counsel and reminded her of the importance of Respondents' providing their financial information so that EPA can evaluate Respondents' inability to pay claims. Respondents' counsel did not respond to that email.

32. On December 15, 2009, EPA sent another letter to Respondents' counsel, requesting that Respondents provide financial information to support their inability to pay claims.

33. On December 21, 2009, in an email, Respondents' counsel made an inability to pay claim; however, she provided no information or documentation to support this claim.

34. On December 22, 2009, by email to their counsel, EPA again requested that Respondents provide their financial information to EPA so that EPA can evaluate their inability to pay claim.

35. As noted in paragraph 19, above, the fair market value of Respondents' property is approximately \$305,000. On or about March 17, 2009, Respondent Kosmoski purchased Respondent Gillan's interest in the property by quit claim deed. In addition, Respondent Kosmoski entered into a one-year lease transaction for the property on September 15, 2009, from which he will derive \$900 in monthly rental income, or \$10,800 over the term of the lease.

36. As of the date of this filing, Complainant has not received any information from Respondents indicating that they are unable to pay the proposed penalty of \$27,090.

Count 1

37. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

38. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(1) requires the lessor to include, either within or as an attachment to each contract to lease target housing, a Lead Warning Statement.

39. Respondents failed to include a Lead Warning Statement, either within or as an attachment to the contract dated June 14, 2005, for 1709 East Marion Street, Shorewood, Wisconsin.

40. Respondents' failure to include, either within or as an attachment to the contract, a Lead Warning Statement for the leasing transaction referred to in paragraph 39, above, violated 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 2

41. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

42. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

43. Respondents failed to include, either within or as an attachment to the contract dated June 14, 2005, for 1709 East Marion Street, Shorewood, Wisconsin, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

44. Respondents' failure to include, either within or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased or a lack of knowledge of such presence for the leasing transaction referred to in paragraph 43, above, constitutes one violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 3

45. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

46. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(3) requires a lessor to include, either within or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee or a statement that no such records are available.

47. Respondents failed to include, either within or as an attachment to the contract dated June 14, 2005, for 1709 East Marion Street, Shorewood, Wisconsin, a list of any records or reports available to the lessors regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

48. Respondents' failure to include, either within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee, or a statement that no such records are available, for the leasing transaction referred to in paragraph 47, above, constitutes one violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 4

49. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

50. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

51. Respondents failed to include, either within or as an attachment to the contract dated June 14, 2005, for 1709 East Marion Street, Shorewood, Wisconsin, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

52. Respondents' failure to include, either within or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C.

§ 2696 for the leasing transaction referred to in paragraph 51, above, constitutes one violation of 40 C.F.R § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 5

53. Complainant incorporates paragraphs 1 through 36 of this Complaint as if set forth in this paragraph.

54. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

55. Respondents failed to include, either within or as an attachment to the contract dated June 14, 2005, for 1709 East Marion Street, Shorewood, Wisconsin, the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures.

56. Respondents' failure to include, either within or as an attachment to the contract, the signatures of the lessor and the lessees certifying to the accuracy of their statements and the dates of such signatures for the leasing transaction referred to in paragraph 55, above, constitutes one violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Proposed Civil Penalty

57. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint as follows:

Count 1: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1).....	\$10,320
Count 2: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2).....	\$7,740
Count 3: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3).....	\$2,580
Count 4: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4).....	\$5,160
Count 5: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6).....	\$1,290
Total Proposed Civil Penalty	\$27,090

58. In determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

59. EPA calculates penalties by applying its *Section 1018 - Disclosure Rule Enforcement Response Policy* dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent’s ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

60. As stated in paragraph 26, above, by letter dated October 14, 2009, EPA advised Respondents that EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes the assessment of a civil administrative penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint, and if Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

In addition to the prefiling letter, EPA requested four times that Respondents submit information so that EPA could factually consider the claimed inability to pay a penalty. Respondents have not provided any information. EPA has obtained public information reflecting that Respondents have assets of at least \$305,100 and rental or other income from property of at least \$10,800. In developing the proposed penalty, EPA has considered all of the available financial information and made no adjustments to the proposed penalty.

Rules Governing This Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondents must file with the Regional Hearing Clerk the original and one copy of each document Respondents intend to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondents must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Ann Coyle to receive any answer and subsequent legal documents that Respondents serve in this proceeding.

You may telephone Ms. Coyle at (312) 886-2248. Her address is:

Ann Coyle (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

Respondents may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

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

Respondents must include the case name and docket number on the check and in the letter transmitting the check. Respondents simultaneously must send copies of the check and transmittal letter to Ann Coyle and to:

Christine Anderson (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

If a Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that he or she is entitled to judgment as a matter of law, that Respondent may request a hearing before an Administrative Law Judge. To request a hearing, the Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, a Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above.

A Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that the Respondent has no knowledge of a particular factual allegation. Where a Respondent states that he or she has no knowledge of a particular factual allegation, the allegation is deemed denied. A Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. A Respondent's answer must also state:

- a. The circumstances or arguments that the Respondent alleges constitute grounds of defense;
- b. The facts that the Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether the Respondent requests a hearing.

If Respondents do not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondents constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondents must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondents may contact Ms. Ann L. Coyle at the address provided above.

Respondents' request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondents may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.


Continuing Obligation to Comply

Respondents' payment of the civil penalty will not satisfy Respondent's legal obligation to comply with TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondents in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

February 3, 2010
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

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USEPA
REGION 5


CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Complaint in the resolution of the civil administration involving Kenneth Kosmoski and Kristin Gillan was filed on February 3, 2010, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7001 0320 0006 0189 9798, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Mr. Kenneth J Kosmoski
Ms. Kristin Gillan
1711 East Marion Street
Shorewood, Wisconsin 53211

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Ann Coyle, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No TSCA-05-2010-0006

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