



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SES
Boston, MA 02114-2023

BY HAND

May 8, 2009

Wanda Rivera
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street
Suite 1100, Mail Code RCH
Boston, MA 02114-2023

Re: In the Matter of Peter Fondini and Michael Walsh
Docket No.: TSCA-01-2009-0055

Dear Ms. Rivera:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Complaint and Notice of Opportunity for Hearing and Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter DeCambre".

Peter DeCambre
Senior Enforcement Counsel

cc: Peter Fondini
Michael Walsh

RECEIVED

MAY 08 2009

EPA ORC
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

MAY 08 2009

EPA ORC
Office of Regional Hearing Clerk

_____)
IN THE MATTER OF:)
)
Peter Fondini and) COMPLAINT AND NOTICE
Michael Walsh.) OF OPPORTUNITY FOR
) A HEARING
)
Respondents.)
)
) Docket Number
) TSCA-01-2009-0055
)
Proceeding under Section 16(a) of the)
of the Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

**ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR A HEARING**

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint ("Complaint") is issued 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits. The Complainant is the Director of the Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1.

II. NATURE OF THE ACTION

2. The Respondents in this action, Peter Fondini and Michael Walsh, are hereby notified of the Director's determination that the Respondents have violated TSCA

Section 409, 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, set forth in 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”). Complainant seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by Complainant of civil and/or criminal penalties. In support of its Complaint, Complainant alleges the following:

III. STATUTORY AND REGULATORY BACKGROUND

3. 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, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account in the rental of homes and apartments.

4. In 1996, the United States Environmental Protection Agency (“EPA”) promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act’s transaction requirements is termed “target housing,” and is defined 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.

6. The implementing regulations set forth at 40 C.F.R. Part 745, Subpart F, require sellers and lessors of target housing, among other things, to provide to purchasers and lessees a lead hazard information pamphlet; including as an attachment, or within the contract to lease target housing, a Lead Warning Statement; a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof; and a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with the Subpart F disclosure requirements is a violation of TSCA Section 409, 15 U.S.C. § 2689.

8. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of TSCA Section 409, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty.

9. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation applicable under Section 16 shall be no more than \$10,000, except for violations occurring after July 28, 1997, which shall be no more than \$11,000.

IV. GENERAL ALLEGATIONS

10. Respondent Peter Fondini is an individual who resides at 20 Prouty Road, Burlington, Massachusetts. Mr. Fondini owns and offers for lease residential real estate.

11. Respondent Michael Walsh is an individual who resides at 357 N. Main Street, North Smithfield, Rhode Island. Mr. Walsh owns and offers for lease residential real estate.

12. At the time of the violations alleged in this Complaint, Respondents Michael Walsh and Peter Fondini owned and offered for lease eleven residential apartment units located at 47/49 Chester Street and 63/65 Chester Street, Woonsocket, Rhode Island.

13. At the time of the violations alleged in this Complaint, Respondents Michael Walsh and Peter Fondini were thus “owners” and “lessors” as defined in 40 C.F.R. § 745.103, of the properties described in Paragraph 12 above.

14. Respondents Peter Fondini and Michael Walsh offered for lease the following units to the lessees listed below, on the dates set forth below:

- a. On December 11, 2005, lessee, Tina Falls, signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 2, Woonsocket, RI. Six children, ages 6 to 16, were residents;
- b. On December 11, 2005, lessee, Santina Samos, signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 5, Woonsocket, RI. A two to three-year old child was resident;
- c. On December 11, 2005, lessees, Cecile and Joseph Parenteau, signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 2, Woonsocket, RI; and
- d. On December 11, 2005, lessee, Theresa Winston, signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 5, Woonsocket, RI. At least one child over six but under eighteen years of age was resident.

15. The housing units listed in Paragraph 14 above currently are, and at the time of the violations alleged in this Complaint were “target housing,” as defined in 40 C.F.R. § 745.103, and do not qualify for exemptions to the provisions of the Act or the Disclosure Rule.

16. Due to elevated blood-lead levels found in children who resided at the 63/65 Chester Street property, on October 14, 1999, certified environmental lead inspectors from the Rhode Island Department of Health (“RIDOH”) inspected 63/65 Chester Street, Unit 3, in Woonsocket, Rhode Island. Due to elevated blood-lead levels found in children who resided at the 47/49 Chester Street property, on March 4, 2004, certified

environmental lead inspectors from the RIDOH inspected 47/49 Chester Street, Unit 5, in Woonsocket, Rhode Island.

17. As a result of the October 14, 1999 inspection conducted at 63/65 Chester Street, Unit 3, Woonsocket, Rhode Island, on November 8, 1999, RIDOH issued to Daniel Dunphy, the owner of the property at the time, a Notice of Violation (“NOV”) for lead hazard violations in this unit under Rhode Island’s Lead Poison Prevention Act and ordered abatement of the violations. RIDOH issued a Second NOV to Daniel Dunphy regarding the same lead hazard violations on November 20, 2000. On January 31, 2001, Respondents Peter Fondini and Michael Walsh purchased the 63/65 Chester Street property from Daniel Dunphy. On June 6, 2001, the Rhode Island Office of the Attorney General issued a Notice of Intention to File Suit against Peter Fondini and Michael Walsh for their failure to abate lead hazards at 63/65 Chester Street, as required in the initial NOV and Second NOV. In October 2003, RIDOH issued a Notice of Pending Lead Hazards to Peter Fondini and Michael Walsh for their failure to fully abate the exterior lead hazards as ordered in RIDOH’s initial NOV and Second NOV for the 63/65 Chester Street property.

18. As a result of the March 4, 2004 lead inspection conducted at 47/49 Chester Street, Unit 5, Woonsocket, Rhode Island, in April 2004, RIDOH issued a NOV to Greater Providence Realty, Inc.¹ for lead hazard violations in this unit under Rhode Island’s Lead Poison Prevention Act and ordered abatement of the violations. On May 13, 2004, RIDOH issued a Second NOV to Greater Providence Realty, Inc. for its failure to fully abate lead hazards as ordered in RIDOH’s initial NOV for the 47/49 Chester

¹ Michael Walsh is listed as the president of Greater Providence Realty, Inc. The address of Greater Providence Realty, Inc. is the same as the residence of Respondent Walsh.

Street property. On August 10, 2004, RIDOH issued a third NOV² to Peter Fondini and Michael Walsh for their failure to fully abate lead hazards as ordered in RIDOH's initial NOV for the 47/49 Chester Street property. On October 14, 2004, RIDOH issued a Notice of Pending Lead Hazards to Peter Fondini and Michael Walsh for their failure to fully abate the exterior lead hazards as ordered in RIDOH's initial NOV and Second NOV for the 49/49 Chester Street property.

19. RIDOH maintains a database of blood lead tests for children under the age of six in Rhode Island. From January 1, 2001 through February 10, 2008, there have been a total of at least six children having blood lead levels greater than 10 micrograms per deciliter living at the 47/49 Chester Street property and the 63/65 Chester Street properties. Significant childhood lead poisoning is defined in the Rhode Island regulations as a confirmed blood lead level of 20 micrograms of lead per deciliter of whole blood in a child under six years of age. Code of Rhode Island Rules, 14-000-013, Section 1.0. Studies by the Centers for Disease Control and Prevention have linked blood lead levels as low as 10 micrograms per deciliter with decreased intelligence and other adverse neurodevelopmental effects in children aged 6 and under. See Department of Health and Human Services, Centers for Disease Control and Prevention, "Surveillance for Elevated Blood Lead Levels Among Children - United States, 1997-2001," *Morbidity and Mortality Weekly Report*, Vol. 52, No SS-10, September 12, 2003, p. 2.

20. On July 12, 2007, EPA inspectors conducted an inspection at the residence of Peter Fondini at 16 Carey Avenue, Burlington, Massachusetts, to evaluate Respondents' compliance with the Disclosure Rule. During the inspection, Peter Fondini stated to the

² Although the August 10, 2004 is captioned as the Second Notice of Violation, it was the third NOV issued by RIDOH for this unit.

EPA inspectors that he was unaware of the Disclosure Rule requirements, and that he had never given any lead disclosure information to his tenants.

21. On October 3, 2007, EPA representatives conducted an inspection at the 47/49 and 63/65 Chester Street properties in Woonsocket, Rhode Island. EPA later obtained copies of documents from Michael Walsh.

V. VIOLATIONS

22. Based on Complainant's review of documentation contained in Respondents' files, additional information submitted to Complainant by Respondents and information gathered by EPA, EPA identified the following violations of the Act:

Count I – Failure to provide lessees with an EPA-approved lead hazard information pamphlet.

23. Paragraphs 1 through 22 above are incorporated by reference as if fully set forth herein.

24. 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 entitled *Protect Your Family From Lead in Your Home*, or an equivalent pamphlet that has been approved for use in particular States by EPA.

25. Respondents Peter Fondini and Michael Walsh failed to provide the following lessees with an EPA-approved lead hazard information pamphlet before the lessees became obligated under a contract to lease target housing:

- a. Tina Falls, who signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005. Six children, ages six to sixteen, were residents.
- b. Santina Samos, who signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. A two to three-year old child was resident.
- c. Cecile and Joseph Parenteau, who signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005.
- d. Theresa Winston, who signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. At least one child over six but under eighteen years of age was resident.

26. Respondents Peter Fondini and Michael Walsh's failure to provide lessees of target housing with an EPA-approved lead hazard information pamphlet prior to the lessees being obligated to lease target housing on four (4) separate occasions constitutes four (4) violations of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409, 15 U.S.C. § 2689.

Count II - Failure to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards and to provide to lessees any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards.

27. Paragraphs 1 through 26 above are incorporated by reference as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 745.107(a)(2) lessors are required to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. Pursuant to 40 C.F.R. § 745.107(a)(4), lessors are required to provide lessees with any records or reports available to the lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing.

29. Respondents Peter Fondini and Michael Walsh failed to disclose to the following lessees the presence of known lead-based paint and/or lead-based paint hazards and to provide the lessees with any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing:

- a. Tina Falls, who signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005. Six children, ages six to sixteen, were residents.
- b. Santina Samos, who signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. A two to three-year old child was resident.
- c. Cecile and Joseph Parenteau, who signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005.
- d. Theresa Winston, who signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. At least one child over six but under eighteen years of age was resident.

30. Specifically, Respondents failed to provide Tina Falls and Santina Samos, prior to the date these lessees became obligated under lease contracts, with the information and documents regarding lead-based paint and/or lead-based paint hazards referenced in Paragraph 17, above.

31. Specifically, Respondents failed to provide Cecile and Joseph Parenteau, and Theresa Winston, prior to the date these lessees became obligated under lease contracts, with the information and documents regarding lead-based paint and/or lead-based paint hazards referenced in Paragraph 18, above.

32. Respondents Peter Fondini and Michael Walsh's failure to disclose to the lessees listed in Paragraph 29 above, the presence of known lead-based paint and/or lead-based paint hazards and to provide the lessees with any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased prior to the lessees becoming obligated to lease target housing on four (4) separate

occasions constitutes four (4) violations of 40 C.F.R. § 745.107(a)(2) and 40 C.F.R. § 745.107(a)(4), and TSCA Section 409, 15 U.S.C. § 2689.

Count III – Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement.

33. Paragraphs 1 through 32 above are incorporated by reference as if fully set forth herein.

34. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include as an attachment or within the contract, the Lead Warning Statement.

35. Respondents Peter Fondini and Michael Walsh failed to include as an attachment, or within the following contracts to lease target housing, the Lead Warning Statement:

- a. Tina Falls signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005. Six children, ages six to sixteen, were residents.
- b. Santina Samos signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. A two to three-year old child was resident.
- c. Cecile and Joseph Parenteau signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005.
- d. Theresa Winston signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. At least one child over six but under eighteen years of age was resident.

36. Respondents Peter Fondini and Michael Walsh's failure to include the Lead Warning Statement as an attachment or within the contract to lease target housing on four (4) separate occasions constitutes four (4) violations of 40 C.F.R. § 745.113(b)(1), and TSCA Section 409, 15 U.S.C. § 2689.

Count IV - Failure to include in the lease or as an attachment thereto, a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof.

37. Paragraphs 1 through 36 above are incorporated by reference as if fully set forth herein.

38. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include as an attachment 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.

39. Respondents Peter Fondini and Michael Walsh failed to include, as an attachment or within the lease contracts with the following lessees, 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:

- a. Tina Falls, who signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005. Six children, ages six to sixteen, were residents.
- b. Santina Samos, who signed a tenancy-at-will lease agreement for 63/65 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. A two to three-year old child was resident.
- c. Cecile and Joseph Parenteau, who signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 2, Woonsocket, RI on December 11, 2005.
- d. Theresa Winston, who signed a tenancy-at-will lease agreement for 47/49 Chester Street, Unit 5, Woonsocket, RI on December 11, 2005. At least one child over six but under eighteen years of age was resident.

40. Specifically, Respondents had knowledge of the existence of lead-based paint at 63/65 Chester Street based on the information set forth in Paragraph 17 above.

41. Specifically, Respondents had knowledge of the existence of lead-based paint at 47/49 Chester Street based on the information set forth in Paragraph 18 above.

42. Respondents Peter Fondini and Michael Walsh's failure to include as an attachment 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 on four (4) separate occasions constitutes four (4) violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

VI. PROPOSED PENALTY

43. Section 1018(b)(5) of the Act, 42 U.S.C. § 4825d(b)(5), and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation under Section 16 of TSCA shall be no more than \$10,000, except for violations occurring after July 28, 1997, which shall be no more than \$11,000.

44. The proposed civil penalties have been determined in accordance with TSCA Section 16, 15 U.S.C. § 2615, which requires the Complainant to consider the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. The penalties are also calculated in accordance with the provisions of 40 C.F.R. § 745.118(f). To develop the proposed penalties in this Complaint, 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* ("ERPP"), a

copy of which is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

45. The provisions violated and the corresponding penalties are as follows:

| Count I: | Count II: | Count III: | Count IV: | Total |
|--|--|---|---|-----------|
| Failure to provide lessee with an EPA-approved lead hazard information pamphlet, "Protect Your Family from Lead in the Home." Provision Violated: 40 C.F.R. § 745.107 (a)(1) | Failure to disclose to a lessee the presence of any known lead-based paint and/or lead-based paint hazards and to provide to lessee any records or reports available to the lessor pertaining to lead-based paint in the target housing. Provision Violated: 40 C.F.R. § 745.107 (a)(2)/(a)(4) | Failure to include as an attachment or within the contract to lease target housing, a Lead Warning Statement. Provision Violated: 40 C.F.R. § 745.113(b)(1) | Failure to include as an attachment or within the lease, a statement by the lessor disclosing the presence of lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof. Provision Violated: 40 C.F.R. § 745.113(b)(2) | |
| \$29,060 | \$29,060 | \$24,770 | \$18,830 | \$101,720 |

46. Respondents shall pay the civil penalty with a cashier's or certified check, payable to the Treasurer, United States of America. Respondents should note on this check the docket number of this Complaint (EPA Docket No. TSCA 01-2009-0055). The check shall be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

and

Peter DeCambre
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency
One Congress Street, Suite 1100 (Mail Code: SES)
Boston, Massachusetts 02114-2023

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

47. As provided by Section 16(2)(A) of TSCA, 15 U.S.C. § 2615(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondents have a right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint.** In their answer, Respondents may contest any material fact contained in the Complaint. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondents intend to place at issue; and, (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondents to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

VIII. DEFAULT ORDER

48. If Respondents fail to file a timely answer to the Complaint, Respondents may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations under Section 16(2)(A) of TSCA, 15 U.S.C. § 2615(2)(A). The penalty assessed in this Complaint shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c).

IX. SETTLEMENT CONFERENCE

49. Whether or not a hearing is requested upon filing an answer, Respondents may confer informally with the EPA concerning the alleged violations. Such conference provides Respondents with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondents' right to a hearing on any issues of law, fact, or discretion included in the Agreement.

50. Please note that a request for an informal settlement conference does not extend the period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondents should contact Peter DeCambre, Senior Enforcement Counsel, Office of Environmental Stewardship, EPA Region I, at the address cited above or at (617) 918-1890. Peter

DeCambre has been designated to represent Complainant and receive service in this action.

51. The following documents are attachments to this Complaint:

1. Proposed Penalty Summary
2. Section 1018 Disclosure Rule Enforcement Response Policy
3. Consolidated Rules of Practice

Susan Studlien
Susan Studlien
Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100
Boston, MA 02114-2023

05/07/09
Date

EPA DOCKET NO. TSCA-01-2009-0xxx
In Re: Fondini/Walsh

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Administrative Complaint has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:


Wanda Rivera
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
One Congress Street, Suite 1100
Boston, MA 02114-2023

Copy by Certified Mail,
Return Receipt Requested

Peter Fondini,
20 Prouty Road,
Burlington, MA 01803

Michael Walsh,
357 N. Main Street,
North Smithfield, RI 02896

Dated: 5/8/09


Peter DeCambre
Senior Enforcement Counsel
U.S. Environmental Protection Agency,
Region 1
Mail Code (SES)
One Congress Street, Suite 1100
Boston, MA 02114-2023
Tel (617) 918-1890
FAX (617) 918-1809

ATTACHMENT 1

In the Matter of Peter Fondini and Michael Walsh, Docket Number TSCA-01-2009-0055

PROPOSED PENALTY SUMMARY

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), EPA proposes a civil penalty in the amount of one hundred one thousand seven hundred twenty dollars (\$101,720) to be assessed against Peter Fondini and Michael Walsh ("Respondents") as follows:

COUNT I – FAILURE TO PROVIDE LESSEES WITH AN EPA-APPROVED LEAD HAZARD INFORMATION PAMPHLET.

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home*, or an equivalent pamphlet that has been approved for use by EPA.

Circumstance Level: Failure to provide a lessee an EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.107(a)(1), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

| Address | Tenant(s) | Lease Date | Age of Occupant | Extent of Harm | Gravity-Based Penalty |
|---------------------------|---------------------------|------------|-----------------|----------------|-----------------------|
| 63/65 Chester St., Unit 2 | Tina Falls | 12/11/2005 | 6 to 18 | Significant | \$7,740 |
| 63/65 Chester St., Unit 5 | Santina Samos | 12/11/2005 | 2 | Major | \$11,000 |
| 47/49 Chester St., Unit 2 | Cecile & Joseph Parenteau | 12/11/2005 | Adult | Minor | \$2,580 |
| 47/49 Chester St., Unit 5 | Theresa Winston | 12/11/2005 | 6 to 18 | Significant | \$7,740 |
| | | | | Total | \$29,060 |

COUNT II - FAILURE TO DISCLOSE TO LESSEES THE PRESENCE OF ANY KNOWN LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS AND TO PROVIDE TO LESSEES ANY RECORDS OR REPORTS AVAILABLE TO THE LESSOR PERTAINING TO LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS.

Provision Violated: 40 C.F.R. § 745.107(a)(2) requires lessors to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards in the target housing and 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees with any records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing.

Circumstance Level: Failure to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards and to provide lessees with any records or reports available to lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing pursuant to 40 C.F.R. § 745.107(a)(2)/ (a)(4), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(2)/(a)(4) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence

of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

| Address | Tenant(s) | Lease Date | Age of Occupant | Extent of Harm | Gravity-Based Penalty |
|---------------------------|---------------------------|------------|-----------------|----------------|-----------------------|
| 63/65 Chester St., Unit 2 | Tina Falls | 12/11/2005 | 6 to 18 | Significant | \$7,740 |
| 63/65 Chester St., Unit 5 | Santina Samos | 12/11/2005 | 2 | Major | \$11,000 |
| 47/49 Chester St., Unit 2 | Cecile & Joseph Parenteau | 12/11/2005 | Adult | Minor | \$2,580 |
| 47/49 Chester St., Unit 5 | Theresa Winston | 12/11/2005 | 6 to 18 | Significant | \$7,740 |
| | | | | Total | \$29,060 |

COUNT III – FAILURE TO INCLUDE AS AN ATTACHMENT, OR WITHIN THE CONTRACT TO LEASE TARGET HOUSING, THE LEAD WARNING STATEMENT.

Provision Violated: 40 C.F.R. § 745.113(b)(1) requires that each contract to lease target housing include as an attachment, or within the contract, the Lead Warning Statement.

Circumstance Level: Failure to include the Lead Warning Statement in the language of the lease contract, or an attachment thereto, pursuant to 40 C.F.R. § 745.113(b)(1), results in a *high probability* of impairing a lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence

of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

| Address | Tenant(s) | Lease Date | Age of Occupant | Extent of Harm | Gravity-Based Penalty |
|---------------------------|---------------------------|------------|-----------------|----------------|-----------------------|
| 63/65 Chester St., Unit 2 | Tina Falls | 12/11/2005 | 6 to 18 | Significant | \$6,450 |
| 63/65 Chester St., Unit 5 | Santina Samos | 12/11/2005 | 2 | Major | \$10,320 |
| 47/49 Chester St., Unit 2 | Cecile & Joseph Parenteau | 12/11/2005 | Adult | Minor | \$1,550 |
| 47/49 Chester St., Unit 5 | Theresa Winston | 12/11/2005 | 6 to 18 | Significant | \$6,450 |
| | | | | Total | \$24,770 |

COUNT IV - FAILURE TO INCLUDE IN THE LEASE OR AS AN ATTACHMENT THERETO, A STATEMENT BY THE LESSOR DISCLOSING THE PRESENCE OF KNOWN LEAD-BASED PAINT OR LEAD-BASED PAINT HAZARDS, OR LACK OF KNOWLEDGE THEREOF.

Provision Violated: 40 C.F.R. § 745.113(b)(2) requires that each contract to lease target housing include, as an attachment or within the lease contract, a statement by a 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.

Circumstance Level: Failing to include the statement of knowledge of lead-based paint and/or lead-based paint hazards as an attachment, or within the contract to lease target housing, results in a *medium probability* of impairing the lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in the housing, violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Disclosure Rule ERP, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

| Address | Tenant(s) | Lease Date | Age of Occupant | Extent of Harm | Gravity-Based Penalty |
|---------------------------|---------------------------|------------|-----------------|----------------|-----------------------|
| 63/65 Chester St., Unit 2 | Tina Falls | 12/11/2005 | 6 to 18 | Significant | \$5,160 |
| 63/65 Chester St., Unit 5 | Santina Samos | 12/11/2005 | 2 | Major | \$7,740 |
| 47/49 Chester St., Unit 2 | Cecile & Joseph Parenteau | 12/11/2005 | Adult | Minor | \$770 |
| 47/49 Chester St., Unit 5 | Theresa Winston | 12/11/2005 | 6 to 18 | Significant | \$5,160 |
| | | | | Total | \$18,830 |