



U. S. ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

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December 14, 2011

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, Massachusetts 02109-3912

Re: *In the Matter of Northeast Housing, LLC, et al.*: Docket No: TSCA 01-2012-0006

Dear Ms. Santiago:

Attached for filing in the above-referenced matter are the original and one copy of an Administrative Complaint and Notice of Opportunity for Hearing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

cc: Leslie Cohn, Esq., Senior Vice President and General Counsel, Balfour Beatty
Communities, LLC

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)

NORTHEAST HOUSING, LLC AND)
BALFOUR BEATTY MILITARY)
HOUSING MANAGEMENT, LLC)

Respondents.)
_____)

Docket No. TSCA-01-2012-0006

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. This administrative Complaint and Notice of Opportunity for Administrative Hearing (“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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Legal Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (“EPA”).

II. NATURE OF THE ACTION

2. The respondents in this action, Northeast Housing, LLC and Balfour Beatty Military Housing Management, LLC (collectively, “Respondents”) are hereby notified of Complainant’s determination that they have violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. §§ 4851 *et seq.*, and federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, set forth in 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Complainant seeks civil penalties

pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409 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. One of 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. To carry out this purpose, the Act added a new title to TSCA entitled "Title IV-Lead Exposure Reduction," which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

4. In 1996, EPA promulgated regulations to implement the Act, including the Disclosure Rule, 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 is termed "target housing." "Target housing" is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling.

6. The Disclosure Rule requires lessors of target housing to, among other things:

- a. Provide lessees with any records or reports available to the lessor pertaining to lead based paint and/or lead-based paint hazards in the target housing being leased, including common areas and records or reports regarding other residential dwellings in

multifamily target housing, provided that such information is part of an evaluation of lead-based paint and/or lead-based paint hazards in the target housing as a whole, 40 C.F.R. § 745.107(a)(4); and

b. Include in each contract to lease target housing a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing, 40 C.F.R. § 745.113(b)(3).

7. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the Disclosure Rule). 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 requirements of the Disclosure Rule is a violation of Section 409 of TSCA.

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 shall be liable to the United States for a civil penalty.

9. Section 1018(b)(5) of the Act provides that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Penalties of up to \$11,000 per violation may be assessed for violations occurring between July 28, 1997, and January 12, 2009, pursuant to 40 C.F.R. § 745.118(f), the Debt Collection Improvement Act of 1996, found at 31 U.S.C. § 3701, and 40 C.F.R. Part 19. For violations occurring after January 12, 2009, the maximum penalty per violation is \$16,000. 73 Fed. Reg. 75340-46 (December 11, 2008) and 40 C.F.R. Part 19.

IV. GENERAL ALLEGATIONS

10. Respondent Northeast Housing, LLC (“Northeast”) is a limited liability company organized under the laws of the State of Delaware with a principal place of business located at 10 Campus Boulevard, Newtown Square, Pennsylvania. Northeast owns and offers for lease

residential real estate.

11. Respondent Balfour Beatty Military Housing Management, LLC (“BBMHM”) is a limited liability company organized under the laws of the State of Delaware with a principal place of business located at 10 Campus Boulevard, Newtown Square, Pennsylvania. BBMHM manages and offers for lease residential real estate.

12. At all times relevant to the allegations in this Complaint, Northeast was the “owner,” as defined in 40 C.F.R. § 745.103, of the following residential properties located at or near Portsmouth Naval Shipyard located in Kittery, Maine (“PNS”) and at or near the United States Naval Submarine Base located in New London and Groton, Connecticut (“NSB-NL”) (collectively “Properties”):

- a. Properties located at or near PNS: Quarters A, B, I, K, L, M, Q, X, Y and 68, in Kittery, Maine; and,
- b. Properties located at or near NSB-NL: 157 Mallard Drive, 453 Burningtrees Drive, and 73 Plum Lane, in Groton, Connecticut.

13. At all times relevant to allegations in this Complaint, BBMHM was the property manager for the Properties.

14. At all times relevant to allegations in this Complaint, Northeast and/or BBMHM was responsible for management, operations, leasing, maintenance and resident services for the Properties located at PNS and NSB-NL.

15. At all times relevant to the allegations in this Complaint, Northeast and BBMHM offered the Properties for lease to prospective tenants. Accordingly, Northeast and BBMHM are “lessors” as defined in 40 C.F.R. § 745.103.

16. All of the Properties were built before 1978, and were, at the time of the

violations alleged in this Complaint, “target housing,” as defined in 40 C.F.R. § 745.103.

17. None of the Properties satisfy the requirements for an exemption to the provisions of the Act or the Disclosure Rule.

18. On March 10, 2010, authorized representatives from EPA conducted an inspection to evaluate Respondents’ compliance with the Disclosure Rule at PNS (“PNS Inspection”).

19. On September 13 and 14, 2010, authorized representatives from EPA conducted an inspection to evaluate Respondents’ compliance with the Disclosure Rule at NSB-NL (“NSB-NL Inspection”).

20. During the PNS Inspection and the NSB-NL Inspection, EPA’s representatives collected leases and other documents and information necessary to evaluate compliance with the Disclosure Rule. Following these inspections, and in the course of investigating the violations alleged below, representatives from EPA obtained additional documents from Respondents including many records and reports regarding lead-based paint and/or lead-based paint hazards in the target housing that were not made available to EPA at the time of the inspections. On July 28, 2010, EPA issued a TSCA subpoena (TSCA-SP-2010-059) to the Commander at PNS and to BBC to follow up on matters discussed and to supplement information collected during the PNS Inspection (the “Subpoena”). EPA received responses to the Subpoena in September and October 2010.

21. Many of the records and reports obtained by EPA documented the presence of lead-based paint and/or lead-based paint hazards at the Properties and identified the location of lead-based paint and/or lead-based paint hazards in and around the Properties.

22. EPA also obtained records documenting an elevated blood-lead level (“EBLL”),

or lead poisoning, in a child who resided in a Property at PNS in 2004.

V. VIOLATIONS

23. Based on documents and information obtained from Respondents during the PNS Inspection and the NSB-NL Inspection, received in response to the Subpoena, and otherwise collected during EPA's investigation of this matter, EPA identified the following violations of the Act and the Disclosure Rule:

FIRST COUNT

Failure to Provide Available Records or Reports to Lessees

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

25. Pursuant to 40 C.F.R. § 745.107(a)(4), a lessor is required to provide to the lessee any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee becomes obligated under the lease contract. This requirement includes records or reports regarding common areas.

26. Pursuant to 40 C.F.R. § 745.103, records "available" to the lessor include those in the possession of or reasonably obtainable by the lessor at the time of the disclosure.

27. At the time that Northeast entered into a lease dated November 4, 2009, with tenants who occupied Quarters A at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters A, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters A, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters A – Charles Morris Avenue, Kittery, Maine*, prepared by Lead Consultants of America,

Inc., August 6, 2007; and 4) *Clearance Examination Report*, prepared by Community Concepts, October 22, 2007.

28. Respondents failed to provide the tenants who leased Quarters A at PNS, beginning November 4, 2009, with the records and reports listed above in Paragraph 27, except for the *Clearance Examination Report*, prepared by Community Concepts, October 22, 2007.

29. At the time that Northeast entered into a lease dated December 16, 2008, with tenants who occupied Quarters B at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters B, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters B, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters B, Kittery, Maine*, prepared by Lead Consultants of America, Inc., July 25, 2008; and 4) *Clearance Examination Report*, prepared by Community Concepts, November 25, 2008.

30. Respondents failed to provide the tenants who leased Quarters B at PNS, beginning December 16, 2008, with the records and reports listed above in Paragraph 29, except for the *Clearance Examination Report*, prepared by Community Concepts, November 25, 2008.

31. At the time that Northeast entered into a lease dated September 10, 2009, with tenants who occupied Quarters I at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters G-J, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property*

Transfer, Quarters I, Portsmouth Naval Shipyard, Kittery, Maine, prepared by Dewberry, July 2004; 3) *Interior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters I, Kittery, Maine*, prepared by Lead Consultants of America, Inc., September 23, 2008; 4) *Notice of Environmental Lead Hazards and Order to Correct*, issued by Maine Department of Health and Human Services, Maine Childhood Lead Poisoning Prevention Program (“ME CLPPP”), December 21, 2004; 5) Letter titled *Site Visit to Quarters “I,” 1 Navy Shipyard Road, Kittery, Maine, and Amendment to Order to Correct*, issued by ME CLPPP, February 18, 2005; and 6) *Clearance Examination Report*, prepared by Community Concepts, February 17, 2009.

32. Respondents failed to provide the tenants who leased Quarters I at PNS, beginning September 10, 2009, with the records and reports listed above in Paragraph 31, except for the *Clearance Examination Report*, prepared by Community Concepts, February 17, 2009, and the *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters I, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004.

33. At the time that Northeast entered into a lease dated July 10, 2007, with tenants who occupied Quarters K at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters K-Q, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters K, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; and 3) *Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos*

Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters K – Navy Shipyard Road, Kittery, Maine, prepared by Lead Consultants of America, Inc., April 27, 2007.

34. Respondents failed to provide the tenants who leased Quarters K at PNS, beginning July 10, 2007, with the records and reports listed above in Paragraph 33.

35. At the time that Northeast entered into a lease dated February 20, 2008, with tenants who occupied Quarters L at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters K-Q, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters L, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Interior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters L – Wyman Avenue, Kittery, Maine*, prepared by Lead Consultants of America, Inc., November 1, 2007; and 4) *Lead Hazard Dust Level Report*, prepared by Community Concepts, January 16, 2008.

36. Respondents failed to provide the tenants who leased Quarters L at PNS, beginning February 20, 2008, with the records and reports listed above in Paragraph 35, except for the *Lead Hazard Dust Level Report*, prepared by Community Concepts, January 16, 2008.

37. At the time that Northeast entered into a lease dated June 22, 2009, with tenants who occupied Quarters M at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters K-Q, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft);

2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters M, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Interior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters M – Goodrich Avenue, Kittery, Maine*, prepared by Lead Consultants of America, Inc., March 17, 2008; 4) *Exterior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters M – Goodrich Avenue, Kittery, Maine*, prepared by Lead Consultants of America, Inc., May 10, 2007; and 5) *Clearance Examination Report*, prepared by Community Concepts, June 30, 2007.

38. Respondents failed to provide the tenants who leased Quarters M at PNS, beginning June 22, 2009, with the records and reports listed above in Paragraph 37, except for the *Clearance Examination Report*, prepared by Community Concepts, June 30, 2007.

39. At the time that Northeast entered into a lease dated June 15, 2009, with tenants who occupied Quarters Q at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters K-Q, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters Q, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Interior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters Q, Kittery, Maine*, prepared by Lead Consultants of America, Inc., October 6, 2008; and 4) *Clearance Examination Report*, prepared by Community Concepts, March 25,

2009.

40. Respondents failed to provide the tenants who leased Quarters Q at PNS, beginning June 15, 2009, with the records and reports listed above in Paragraph 39, except for the *Clearance Examination Report*, prepared by Community Concepts, March 25, 2009.

41. At the time that Northeast entered into a lease dated February 19, 2010, with tenants who occupied Quarters X at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters S, U, V, W, X, Y, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters X, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Interior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters X, Kittery, Maine*, prepared by Lead Consultants of America, Inc., May 27, 2008; 4) *Exterior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters X – Seavey Street, Kittery, Maine*, prepared by Lead Consultants of America, Inc., May 5, 2007; and 5) *Clearance Examination Report*, prepared by Community Concepts, September 9, 2008.

42. Respondents failed to provide the tenants who leased Quarters X at PNS, beginning February 19, 2010, with the records and reports listed above in Paragraph 41, except for the *Clearance Examination Report*, prepared by Community Concepts, September 9, 2008.

43. At the time that Northeast entered into a lease dated July 1, 2008, with tenants who occupied Quarters Y at PNS, the following records or reports were available to

Respondents: 1) *Lead Management Plan, Quarters S, U, V, W, X, Y, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters Y, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Interior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters Y – 80 Whipple Road, Kittery, Maine*, prepared by Lead Consultants of America, Inc., January 10, 2008; 4) *Exterior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing Rehabilitation Project, Portsmouth Naval Shipyard, Quarters Y – 80 Whipple Road, Kittery, Maine*, prepared by Lead Consultants of America, Inc., May 5, 2007; and 5) *Lead-Dust Level Examination Report*, prepared by Community Concepts, April 11, 2008.

44. Respondents failed to provide the tenants who leased Quarters Y at PNS, beginning July 1, 2008, with the records and reports listed above in Paragraph 43, except for the *Lead-Dust Level Examination Report*, prepared by Community Concepts, April 11, 2008.

45. At the time that Northeast entered into a lease dated January 24, 2008, with tenants who occupied Quarters 68 at PNS, the following records or reports were available to Respondents: 1) *Lead Management Plan, Quarters 68 and 192A/B, Naval Shipyard (NSY) – Portsmouth, Kittery, Maine*, prepared by Naval Training Center (NTC) – Great Lakes, October 1997 (Draft); 2) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters 68, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004; 3) *Exterior Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Navy Northeast Military Historical Housing*

Rehabilitation Project, Portsmouth Naval Shipyard, Quarters 68 – Sloat Avenue, Kittery, Maine, prepared by Lead Consultants of America, Inc., May 5, 2007; and 4) *Clearance Examination Report*, prepared by Community Concepts, November 26, 2007.

46. Respondents failed to provide the tenants who leased Quarters 68 at PNS, beginning January 24, 2008, with the records and reports listed above in Paragraph 45, except for the *Clearance Examination Report*, prepared by Community Concepts, November 26, 2007.

47. At the time that Northeast entered into a lease dated November 19, 2009, with tenants who occupied 157 Mallard Drive at NSB-NL, the following records or reports were available to Respondents: 1) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Nautilus Park I Housing, NSB-NL, Groton, CT*, prepared by Dewberry, July 2004; and 2) *Pre-Renovation Limited Lead-Based Paint and Asbestos Survey, Nautilus Park Naval Submarine Base, 157 Mallard Road, Groton, CT*, prepared by Lead Consultants of America, Inc., November 21, 2007.

48. Respondents failed to provide the tenants who leased 157 Mallard Drive at NSB-NL, beginning November 19, 2009, with the records and reports listed above in Paragraph 47, except for the *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Nautilus Park I Housing, NSB-NL, Groton, CT*, prepared by Dewberry, July 2004.

49. At the time that Northeast entered into a lease dated October 27, 2009, with tenants who occupied 453 Burningtreet Drive at NSB-NL, the following records or reports were available to Respondents: 1) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Nautilus Park II Un-Renovated, NSB-NL, Groton, CT*, prepared by Dewberry, July 2004; and 2) *Pre-Renovation Limited Lead-Based Paint and*

Asbestos Survey, Nautilus Park II – Un-Renovated, 451& 453 Burningtreet Road, Groton, CT, prepared by Lead Consultants of America, Inc., May 31, 2006.

50. Respondents failed to provide the tenants who leased 453 Burningtreet Drive at NSB-NL, beginning October 27, 2009, with the records and reports listed above in Paragraph 49, except for the *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Nautilus Park II Un-Renovated, NSB-NL, Groton, CT,* prepared by Dewberry, July 2004.

51. At the time that Northeast entered into a lease dated April 2, 2010, with tenants who occupied 73 Plum Lane at NSB-NL, the following records or reports were available to Respondents: 1) *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Nautilus Park I Housing, NSB-NL, Groton, CT,* prepared by Dewberry, July 2004; and 2) *Pre-Renovation Limited Lead-Based Paint Inspection/Lead Hazard Assessment and Limited Asbestos Survey, Nautilus Park Naval Submarine Base, 73 Plum Lane, Groton, CT,* prepared by Lead Consultants of America, Inc., October 6, 2009.

52. Respondents failed to provide the tenants who leased 73 Plum Lane at NSB-NL, beginning April 2, 2010, with the records and reports listed above in Paragraph 51, except for the *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Nautilus Park I Housing, NSB-NL, Groton, CT,* prepared by Dewberry, July 2004.

53. Respondents' failure to provide records or reports pertaining to lead-based paint and/or lead-based paint hazards to thirteen (13) lessees constitutes thirteen (13) violations of 40 C.F.R. § 745.107(a)(4), and Section 409 of TSCA, 15 U.S.C. § 2689.

54. The violations alleged in the First Count are prohibited acts under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.118(e) and violations for which penalties may be

assessed pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and Section 16 of TSCA, 15 U.S.C. § 2615.

SECOND COUNT

Failure to Provide Lists of Records and Reports to Lessees

55. Paragraphs 1 through 54 are incorporated by reference as if fully set forth herein.

56. Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing must include a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards within, or as an attachment to, the contract.

57. Respondents failed to include a list of the records or reports referenced in paragraph 27 as an attachment or within the lease contract for Quarters A at PNS, dated November 4, 2009.

58. Respondents failed to include a list of the records or reports referenced in paragraph 29, except for, upon information and belief, the *Lead-Based Paint Inspection/Risk Assessment and Asbestos Survey For Residential Property Transfer, Quarters B, Portsmouth Naval Shipyard, Kittery, Maine*, prepared by Dewberry, July 2004, as an attachment or within the lease contract for Quarters B at PNS, dated December 16, 2008.

59. Respondents failed to include a list of the records or reports referenced in paragraph 31 as an attachment or within the lease contract for Quarters I at PNS, dated September 10, 2009.

60. Respondents failed to include a list of the records or reports referenced in paragraph 33 as an attachment or within the lease contract for Quarters K at PNS, dated July 10, 2007.

61. Respondents failed to include a list of the records or reports referenced in paragraph 35 as an attachment or within the lease contract for Quarters L at PNS, dated February

20, 2008.

62. Respondents failed to include a list of the records or reports referenced in paragraph 37 as an attachment or within the lease contract for Quarters M at PNS, dated June 22, 2009.

63. Respondents failed to include a list of the records or reports referenced in paragraph 39 as an attachment or within the lease contract for Quarters Q at PNS, dated June 15, 2009.

64. Respondents failed to include a list of the records or reports referenced in paragraph 41 as an attachment or within the lease contract for Quarters X at PNS, dated February 19, 2010.

65. Respondents failed to include a list of the records or reports referenced in paragraph 43 as an attachment or within the lease contract for Quarters Y at PNS, dated July 1, 2008.

66. Respondents failed to include a list of the records or reports referenced in paragraph 45 as an attachment or within the lease contract for Quarters 68 at PNS, dated January 24, 2008.

67. Respondents failed to include a list of the records or reports referenced in paragraph 47 as an attachment or within the lease contract for 157 Mallard Drive at NSB-NL, dated November 19, 2009.

68. Respondents failed to include a list of the records or reports referenced in paragraph 49 as an attachment or within the lease contract for 453 Burningtrees Drive at NSB-NL, dated October 27, 2009.

69. Respondents failed to include a list of the records or reports referenced in

paragraph 51 as an attachment or within the lease contract for 73 Plum Lane at NSB-NL, dated April 2, 2010.

70. Respondents' failure to include a list of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards as an attachment or within the lease contracts with thirteen (13) lessees constitutes thirteen (13) separate violations of 40 C.F.R. § 745.113(b)(3), and Section 409 of TSCA, 15 U.S.C. § 2689.

71. The violations alleged in the Second Count are prohibited acts under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.118(e) and violations for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and Section 16 of TSCA, 15 U.S.C. § 2615.

VI. PROPOSED PENALTY

72. Based upon the violations described in this Complaint, a civil penalty of \$153,070 is hereby proposed to be assessed against Respondents. The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. § 745.118(f), as well as the Debt Collection Improvement Act of 1996¹ and its implementing regulations at 40 C.F.R. Part 19. Under Section 16 of TSCA, Complainant must consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, its ability to pay, the effect of the proposed penalty on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

73. To calculate the civil penalty proposed herein, Complainant has taken into account the particular facts and circumstances of this case with specific consideration of EPA's

1. Pub. L. No. 104-134, 110 Stat. 1321 (31 U.S.C. § 3701 note).

December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* (the “ERPP”), a copy of which is enclosed with this Complaint. The ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. The document marked as Attachment 1 to this Complaint provides a more detailed explanation of the penalty proposed herein. The proposed penalty was developed based upon the best information available to Complainant but may be adjusted if Respondents establish a *bona fide* claim of ability to pay or other issues relevant to determining an appropriate penalty.

74. The penalties proposed for violations alleged under each count in this Complaint are:

<u>Count</u>	<u>Regulation Violated</u>	<u>Description</u>	<u>Penalty</u>
1	40 C.F.R. § 745.107(a)(4)	Failure to provide available records or reports to lessees	\$129,080
2	40 C.F.R. § 745.113(b)(3)	Failure to provide lists of records and reports to lessees	\$23,990

VII. QUICK SETTLEMENT

75. Under Section 22.18(a) of EPA’s Consolidated Rules of Practice, Respondents have the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty shall be by bank, cashier’s, or certified check, payable to the “Treasurer, United States of America.” Respondents shall note on the check the docket number of this enforcement action, namely, EPA Docket No. TSCA-01-2012-0006. 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:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, Massachusetts 02109-3912

and

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-2)
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondents need not file an Answer. If Respondents agree to pay the penalty but need additional time, Respondents may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondents need not file an Answer and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. *See* 40 C.F.R. § 22.18(a).

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

76. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, Respondents have the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be incorporated into Respondents' written Answer to this Complaint and filed with

the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

77. In their Answer, Respondents may also: (1) dispute any material fact in the Complaint; (2) contend the proposed penalty is inappropriate; or (3) contend that they are entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. If Respondents have no knowledge of a particular factual allegation and so state, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondents intend to place at issue. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

78. The original and one copy of the Answer, as well as a copy of all other documents which Respondents file in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, Massachusetts 02109-3912

Respondents should also send a copy of the Answer, as well as a copy of all other documents which Respondents file in this action, to Laura J. Berry, the attorney assigned to represent EPA and designated to receive service in this matter at:

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-2)
Boston, Massachusetts 02109-3912

79. If Respondents fail to file a timely Answer to this Complaint, they may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

80. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

IX. INFORMAL SETTLEMENT CONFERENCE

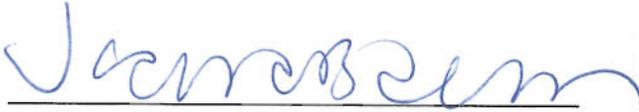
81. Whether or not a hearing is requested upon filing an Answer, Respondents may confer informally with the EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondents with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

82. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondents should contact Laura J. Berry, Enforcement Counsel, Office of Environmental Stewardship, EPA Region 1, at the address cited above or at (617) 918-1148. Ms. Berry has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.

X. CONTINUED COMPLIANCE OBLIGATION

83. Neither assessment nor payment of an administrative penalty shall affect

Respondents' continuing obligation to comply with all applicable requirements of federal law.



Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

12/13/11
Date

ATTACHMENT 1

In the Matter of Northeast Housing, LLC, et al.
Docket Number TSCA-01-2012-0006

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 fifty-three thousand and seventy dollars (\$153,070) to be assessed against Northeast Housing, LLC and Balfour Beatty Military Housing Management, LLC, as follows¹:

COUNT 1 - FAILURE TO PROVIDE RECORDS OR REPORTS TO LESSEES

Provisions Violated: 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

Circumstance Level: Failure to provide information about any known lead-based paint and/or lead-based paint hazards represents the greatest deviation from the Disclosure Rule requirements. Failure to provide available records or reports regarding lead-based paint and/or lead-based paint hazards has a high probability of impairing a lessee's ability to properly assess and weigh potential health risks when leasing target housing and greatly increases the likelihood of exposure to lead-based paint hazards. As a result, under the ERPP, Appendix B, a violation of 40 C.F.R. § 745.107(a)(4) is a *Level 1* violation.

Extent of Harm: The ERPP 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

¹ Section 1018(b)(5) of the Act provides that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Penalties of up to \$11,000 per violation may be assessed for violations occurring between July 28, 1997, and January 12, 2009, pursuant to 40 C.F.R. § 745.118(f), the Debt Collection Improvement Act of 1996, found at 31 U.S.C. § 3701, and 40 C.F.R. Part 19. Effective January 12, 2009, the maximum penalty per violation is \$16,000. 73 Fed. Reg. 75340-46 (December 11, 2008) and 40 C.F.R. Part 19.

eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondents failed to provide the following lessees with the records or reports referenced in paragraphs 27 through 52 of the Complaint:

Address	Lease Date	Children/Ages	Extent of Harm	Gravity-Based Penalty
Quarters A at PNS	11/04/2009	4 children, aged 3, 8 (twins) and 11 years	Major	\$16,000
Quarters B at PNS	12/16/2008	2 children, aged 8 and 12 years	Significant	\$7,740
Quarters I at PNS	09/10/2009	2 children, aged 3 and 5 years	Major	\$16,000
Quarters K at PNS	07/10/2007	None	Minor	\$2,580
Quarters L at PNS	02/20/2008	4 children, aged 3, 7, 14 and 18 years	Major	\$11,000
Quarters M at PNS	06/22/2009	4 children, aged 6 (twins), 7 and 8 years	Significant	\$8,500
Quarters Q at PNS	06/15/2009	3 children, aged 2, 4 and 6 years	Major	\$16,000
Quarters X at PNS	02/19/2010	None	Minor	\$2,840
Quarters Y at PNS	07/01/2008	2 children, aged 1 and 5 years	Major	\$11,000
Quarters 68 at PNS	01/24/2008	None	Minor	\$2,580
157 Mallard Drive at NSB-NL	11/19/2009	1 child, aged 3 years	Major	\$16,000
453 Burningtrees Drive at NSB-NL	10/27/2009	None	Minor	\$2,840
73 Plum Lane at NSB-NL	04/02/2010	3 children, aged 4, 7, and 10 years	Major	\$16,000

Accordingly, the total proposed penalty for the violations alleged in Count 1 is \$129,080.

COUNT 2 – FAILURE TO PROVIDE LISTS OF RECORDS AND REPORTS TO LESSEES

Provision Violated: Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing must include a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards within, or as an attachment to, the contract.

Circumstance Level: Failure to include a list of any records or reports in a contract to lease target housing has a lesser probability of impairing a lessee’s ability to properly assess and weigh potential health risks when leasing target housing, but could potentially increase the likelihood of exposure to lead-based paint hazards. As a result, under the ERPP, Appendix B, a violation of 40 C.F.R. § 745.113(b)(3) is a *Level 5* violation.

Extent of Harm: The ERPP 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.

Respondents failed to include a list of any available records or reports in, or attached to, the following lease contracts:

Address	Lease Date	Children/Ages	Extent of Harm	Gravity-Based Penalty
Quarters A at PNS	11/04/2009	4 children, aged 3, 8 (twins) and 11 years	Major	\$2,840
Quarters B at PNS	12/16/2008	2 children, aged 8 and 12 years	Significant	\$1,680
Quarters I at PNS	09/10/2009	2 children, aged 3 and 5 years	Major	\$2,840
Quarters K at PNS	07/10/2007	None	Minor	\$260
Quarters L at PNS	02/20/2008	4 children, aged 3, 7, 14 and 18 years	Major	\$2,580

Address	Lease Date	Children/Ages	Extent of Harm	Gravity-Based Penalty
Quarters M at PNS	06/22/2009	4 children, aged 6 (twins), 7 and 8 years	Significant	\$1,850
Quarters Q at PNS	06/15/2009	3 children, aged 2, 4 and 6 years	Major	\$2,840
Quarters X at PNS	02/19/2010	None	Minor	\$290
Quarters Y at PNS	07/01/2008	2 children, aged 1 and 5 years	Major	\$2,580
Quarters 68 at PNS	01/24/2008	None	Minor	\$260
157 Mallard Drive at NSB-NL	11/19/2009	1 child, aged 3 years	Major	\$2,840
453 Burnintree Drive at NSB-NL	10/27/2009	None	Minor	\$290
73 Plum Lane at NSB-NL	04/02/2010	3 children, aged 4, 7, and 10 years	Major	\$2,840

Accordingly, the total proposed penalty for the violations alleged in Count 2 is \$23,990.

