

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:) U.S. EPA Docket No.
) TSCA-03-2010-0249
WILLIAM R. OATES, JR.)
)
RESPONDENT) RESPONDENT ANSWER AND
) REQUEST FOR A HEARING
)
1202 Isabella St.)
Williamsport, PA 17701,)
)
PROPERTY.)
)
Respondent)

ANSWER AND REQUEST FOR HEARING

William R. Oates, Jr. (Respondent), through his undersigned counsel, without admitting that he is a person subject to these proceedings, hereby files this Answer and Request for a Hearing (hereinafter referred to as the "Answer") to the Administrative Complaint and Notice of Opportunity for a Hearing Issued Pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) (hereinafter referred to as the "Administrative Complaint"), dated March 24, 2010, issued by the U.S. Environmental Protection Agency ("EPA") Region III Director of the Land and Chemicals Division ("Complainant"), and received by Respondent on March 25, 2010, on the matters contained therein. Respondent states as follows to the factual allegations set forth in the Administrative Complaint as follows:

1. JURISDICTION

1. In regard to Paragraph 1 of the Administrative Complaint, the Complainant lacks jurisdiction to bring this Administrative Complaint. Paragraph 1 is denied.

II. DEFINITIONS AND REGULATORY REQUIREMENTS

2. Paragraphs 2 – 13 of the Administrative Complaint are a statement of law and do not contain any factual allegation to which a response is required. To the extent that the paragraphs are considered allegations, such allegations are denied.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. Paragraph 14 of the Administrative Complaint contain allegations that are conclusions of law for which no answer is required. By way of further answer, Respondent admits that he was an “owner” of the property located at 1202 Isabella Street, Williamsport, Pennsylvania (hereinafter referred to as “the Property”). After the Respondent left Pennsylvania for employment reasons, he contracted with a real estate company to manage the Property. Upon information and belief, on or about October 5, 2007, the real estate company was attempting to lease the Property. Except as specifically admitted, the allegations are denied.

4. Respondent admits that the Property has been used as the home or residence for one or more persons for a portion of the time after October 5, 2007. Otherwise, paragraph 15 of the Administrative Complaint is denied.

5. Paragraph 16 of the Administrative Complaint contains conclusion(s) of law for which no response is required. By way of further answer, Respondent admits that the building situated on the Property was originally constructed prior to 1978. Otherwise, paragraph 16 of the Administrative Complaint is denied.

6. Paragraph 17 of the Administrative Complaint is a conclusion of law and does not contain any factual allegation to which a response is required. To the extent that the paragraphs are considered allegations, such allegations are denied.

7. Paragraph 18 of the Administrative Complaint is a conclusion of law and does not contain any factual allegation to which a response is required. To the extent that the statements in the paragraph are considered allegations, such allegations are denied.

8. Respondent admits that a real estate company leased the Property on or about October 5, 2007. Otherwise, Paragraph 19 of the Administrative Complaint is denied.

9. Paragraph 20 is a statement of law and does not contain any factual allegation to which a response is required. To the extent that the statements in the paragraph are considered allegations, such allegations are denied.

III. ALLEDGED VIOLATIONS

Count I

10. The admissions and denials in paragraphs 1 through 9 of this Answer are incorporated by reference herein as though fully set forth herein.

11. In regard to Paragraph 22 of the Administrative Complaint, Respondent admits that he knew that lead-based paint and/or lead-based paint hazards existed in the Property prior to October 5, 2007. Except as specifically admitted, the allegations are denied.

12. Respondent denies the allegations of Paragraph 23 of the Administrative Complaint. Prior to retaining a real estate company to assist with the management of the Property, Respondent managed the Property. During his management period, Respondent disclosed the presence of lead-based paint to lessees and provided records and/or reports pertaining to the lead-based paint. Respondent moved to North Carolina because of employment reasons and hired a real estate company to manage the Property in his absence. Respondent disclosed the presence of lead-based paint to the real estate company. In his absence from Pennsylvania, Respondent depended on the real estate company for compliance with the lead-based paint notice requirements.

13. Paragraph 24 of the Administrative Complaint is a conclusion of law and does not contain any factual allegation to which a response is required. To the extent that the statements in paragraph 24 are considered allegations, such allegations are denied.

Count II

14. The admissions and denials in paragraphs 1 through 13 of this Answer are incorporated by reference herein as though fully set forth at length herein.

15. In regard to Paragraph 26 of the Administrative Complaint, Respondent admits that, prior to October 5, 2007, records and/or reports were available to the Respondent pertaining to lead-based paint at the Property.

16. Respondent denies the allegations of Paragraph 27 of the Administrative Complaint. Respondent disclosed the existence of records and/or reports pertaining lead-based paint in the Property to the real estate company and the Respondent depended on the company for compliance with the notice requirements.

17. Paragraph 28 of the Administrative Complaint is a conclusion of law and does not contain any factual allegation to which a response is required. To the extent that the statements in the paragraph are considered allegations, such allegations are denied.

Count III

18. The admissions and denials in paragraphs 1 through 17 of this Answer are incorporated by reference herein as though fully set forth herein.

19. In regard to Paragraph 30 of the Administrative Complaint, Respondent admits that, prior to October 5, 2007, records and/or reports were available to the Respondent pertaining to lead-based paint at the Property. Except as specifically admitted, the allegations are denied.

20. In regard to Paragraph 31 of the Administrative Complaint, allegations are denied. Prior to retaining a real estate company to assist with the management of the Property, Respondent managed the Property. During his management period, Respondent disclosed the presence of lead-based paint to lessees and provided records and/or reports pertaining to the lead-based paint. Respondent moved to North Carolina because of employment reasons and hired a real estate company to manage the Property in his absence. Respondent disclosed the presence of lead-based paint to the real estate company. In his absence from Pennsylvania, Respondent depended on the real estate company for compliance with the lead-based paint notice requirements.

21. Paragraph 32 of the Administrative Complaint is a conclusion of law and does not contain any factual allegation to which a response is required. To the extent that the statements in the paragraph are considered allegations, such allegations are denied.

GENERAL DENIAL

Respondent denies each and every allegation of the Administrative Complaint, except as expressly admitted or otherwise stated above.

FIRST DEFENSE

The complainant lacks jurisdiction to bring this Complaint.

SECOND DEFENSE

Prior to retaining a real estate company to assist with the management of the Property, Respondent personally managed the Property. During his management period, Respondent disclosed the presence of lead-based paint to lessees. Respondent moved to North Carolina because of employment reasons and hired a real estate company to manage the Property in his absence. Respondent disclosed the presence of lead-based paint to the company. In his absence from Pennsylvania, Respondent depended on the company for compliance with the lead-based paint notice requirements. Pursuant to 40 C.F.R. § 745.115, the Agent has specific obligations and should be held responsible for any failure to disclose to a lessee the presence of lead-based paint and/or lead-based paint hazards known by the lessor and disclosed to the Agent.

THIRD DEFENSE

The complainant's proposed assessment of civil penalties against Respondent for the violations alleged in the Complaint is (a) arbitrary, capricious and an abuse of discretion, or otherwise not in accordance with law; and (b) inequitable and unwarranted by the facts.

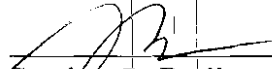
FOURTH DEFENSE

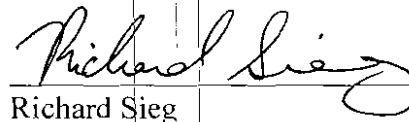
The Administrative Complaint fails to join necessary and indispensable parties.

PRAYER AND REQUEST FOR HEARING

For the reasons stated above, Respondent requests that the Administrative Complaint be dismissed. In the event that the Administrative Complaint is not dismissed, Respondent requests that this matter be set for a Hearing pursuant to the Administrative Complaint.

Respectfully submitted, this 22nd day of April, 2010.


Stephen R. Berlin
N.C. Bar No. 12317


Richard Sieg
N.C. Bar No. 38508

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Attorney for Respondent

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have served a copy of the within and foregoing "Answer and Request for a Hearing" of Respondent William R. Oates, Jr. by causing same to be placed in the United States Mail with adequate first-class postage affixed thereon, addressed as follows:

Mr. Jeffrey S. Nast
Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

This 22nd day of April, 2010.



Stephen R. Berlin
N.C. Bar No. 12317

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