

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:)
)
John Rice, LLC)
930 Avenue A)
Opelika, Alabama 36801)
)
Respondent)
_____)

Docket No. TSCA-4-2012-2646

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AMENDED MOTION FOR DEFAULT

COMES NOW THE Complainant, Director of the Air, Pesticides, and Toxics Management Division of the United States Environmental Protection Agency (EPA) Region 4, and amends the Motion for Default filed previously in this matter by requesting that a different penalty amount be assessed. In response to an Order from the Regional Judicial Officer filed July 8, 2014, on August 4, 2014, Complainant filed a response stating that the "extent" level designations for violations relating to three of the four leases should have been "minor" instead of "significant." Consequently, Complainant herein revises the penalties it seeks for this matter. Complainant requests that a total penalty of \$38,660 be assessed. This penalty is the sum of the penalties calculated below.

- (1) Counts 1- 4: EPA alleges in these counts that Respondent did not provide lessees with EPA-approved lead-hazard information pamphlets, in violation of 40 C.F.R. § 745.107(a)(1). The penalty for each of the three violations where the extent level is minor is \$2,580. See ERPP at 30. Complainant continues to propose a penalty of \$6,600 for the remaining violation where the extent level was not changed. The penalty for counts 1-4 is \$14,340 ((3 x \$2,580) + \$6,600).

(2) Counts 5-8: EPA alleges in these counts that Respondent did not include a lead warning statement as an attachment to or within the lease, in violation of 40 C.F.R. § 745.113(b)(1). The penalty for each of the three violations where the extent level is minor is \$1,550. See ERPP at 30. For the remaining violation where the extent level is significant, Complainant continues to propose a penalty of \$5,500. The penalty for counts 5-8 is \$10,150 ((3 x \$1,550) + \$5,500).

(3) Counts 10 - 13: EPA alleges in these counts that Respondent did not include in the leases a statement disclosing the presence of lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint or lead-based paint hazards, in violation of 40 C.F.R. § 745.113(b)(2). The penalty for each of the three violations where the extent level is minor is \$770. See ERPP at 30. For the remaining violation where the extent level is significant, Complainant continues to propose a penalty of \$4,400. The penalty for counts 10 - 13 is \$6,710 ((3 x \$770) + \$4,400).

(4) Counts 15 -18: EPA alleges in these counts that Respondent did not include in four leases a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessees or indicate that no such records or reports are available, in violation of 40 C.F.R. § 745.113(b)(3). The penalty for each of the three violations where the extent level is minor is \$260. See ERPP at 30. For the remaining violation where the extent level is significant, Complainant continues to propose a penalty of \$1,430. The penalty for counts 15 - 18 is \$2,210 ((3 x \$260) + \$1,430).

(5) Counts 20 - 23: EPA alleges in these counts that Respondent did not include in four leases a statement by the lessees affirming receipt of the information set forth in 40 C.F.R.

§ 745.113(b)(2) and (3) and the lead information pamphlet required under 15 U.S.C. § 2696, in

violation of 40 C.F.R. § 745.113(b)(4). The penalty for each of the three violations where the extent level is minor is \$520. See ERPP at 30. For the remaining violation where the extent level is significant, Complainant continues to propose a penalty of \$2,750. The penalty for counts 20 - 23 is \$4,310 ((3 x \$520) + \$2,750).

(6) Counts 25 - 28: EPA alleges in these counts that Respondent did not include signatures of Respondent and the lessees certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature, in violation of 40 C.F.R. § 745.113(b)(6). The penalty for each of the three violations where the extent level is minor is \$130. See ERPP at 30. For the remaining violation where the extent level is significant, Complainant continues to propose a penalty of \$550. The penalty for counts 25 - 28 is \$940 ((3 x \$130) + \$550).

Penalty Table

Below is a penalty summary table.

Penalty Summary Table

Counts	Circumstances Level	Extent Level	Penalty for one count	Penalty for group of counts
Counts 1-4	1	Minor	\$2,580	3 x \$2,580 = \$7,740
		Significant	\$6,600	\$6,600 + \$7,740 = \$14,340
Counts 5-8	2	Minor	\$1,550	3 x \$1,550 = \$4,650
		Significant	\$5,500	\$5,500 + \$4,650 = \$10,150
Counts 10 - 13	3	Minor	\$ 770	3 x \$770 = \$2,310
		Significant	\$4,400	\$4,400 + \$2,310 = \$6,710

Counts	5	Minor	\$ 260	3 x \$260 = \$780
15 - 18		Significant	\$1,430	\$1,430 + \$780 = \$2,210
Counts	4	Minor	\$ 520	3 x \$520 = \$1,560
20 -23		Significant	\$2,750	\$2,750 + \$1,560 = \$4,310
Counts	6	Minor	\$ 130	3 x \$130 = \$390
25 - 28		Significant	\$ 550	\$550 + \$390 = \$940

TOTAL PENALTY: \$38,660

Complainant proposes that a penalty of \$38,660 be assessed against Respondent. This penalty amount is not inconsistent with the record.

WHEREFORE, Complainant requests issuance of a Default Order against Respondent to resolve the entire proceeding with a penalty assessment of \$38,660.

Respectfully submitted,



Michiko Kono
Attorney for Complainant

Date: 9/2/2014

CERTIFICATE OF SERVICE

I certify that the original Amended Motion for Default in the John Rice, LLC matter, Docket Number TSCA-04-2012-2646, and a copy were filed with the Regional Hearing Clerk, and a copy of the Motion for Default with exhibits was mailed to the addressees listed below on this 2nd day of September, 2014.

Addressees:

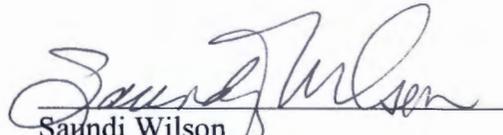
John W. Rice
John Rice, LLC
930 Avenue A
Opelika, Alabama 36801

(First class mail)

Susan Schub
Regional Judicial Officer
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Internal EPA mail)

9-2-14
Date


Saundi Wilson
Paralegal Specialist

U.S. EPA, Region 4
Environmental Accountability Division
61 Forsyth St.
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