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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2007-08-27 11:13 AM
REGION 8
Docket No. **TSCA-08-2007-0010**

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In the Matter of:)
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Cherry Hills Apartments Business Trust,) **PENALTY COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
Respondent.)

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INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act (“Residential Lead Hazard Act”) and the Toxic Substances Control Act (“TSCA”). 42 U.S.C. § 4851 *et seq.*, and 15 U.S.C. § 2601 *et seq.* EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the Code of Federal Regulations and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA. The rules for this proceeding are 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 (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has failed to comply with federal regulations regarding the disclosure of lead-based paint hazards, found at 40 C.F.R. part 745, subpart F and, therefore, is in violation of the Residential Lead Hazard Act and TSCA. As a result, EPA proposes the assessment of a civil penalty, as more fully explained below. 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to contest (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty, or both.

5. To disagree with the Complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street, Denver, CO 80202-1129) not more than 30 days after receiving this Complaint and provide a copy to the enforcement attorney listed below. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of

1 Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN**
2 **ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE**
3 **RESPONDENT’S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR**
4 **PROPOSED PENALTY AND RESULT IN A DEFAULT JUDGMENT AND**
5 **ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

6 7 **QUICK RESOLUTION**

8
9 6. Respondent may resolve this proceeding at any time by paying the specific penalty
10 proposed in the Complaint. Such payment need not contain any response to, or admission of,
11 the allegations in the Complaint. Such payment constitutes a waiver of Respondent’s right to
12 contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice
13 for a full explanation of the quick resolution process, including how extensions of time to pay
14 can be obtained.

15 16 **SETTLEMENT NEGOTIATIONS**

17
18 7. EPA encourages settlement discussions through informal settlement conferences.
19 If you want to pursue the possibility of settling this matter, or have any other questions, contact
20 Eduardo Quintana, Senior Enforcement Attorney, at 303-312-6924 or 1-800-227-8917; extension
21 312-6924 or at the address below. **Please note that contacting the attorney or requesting a**
22 **settlement conference does NOT delay the running of the 30 day period for either paying**
23 **the penalty or filing an answer and requesting a hearing.**

24 25 **ALLEGATIONS**

26
27 8. Respondent is the Cherry Hills Apartments Business Trust, (“Respondent”).

28
29 9. EPA regulations require, among other things, that an owner of housing
30 constructed before 1978 shall, prior to obligating a lessee under a contract to lease or rent the
31 housing, provide or include in or attach to the leasing contract, (1) an EPA-approved lead hazard
32 information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of
33 any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such
34 presence), (4) a list of any records or reports available to the owner related to lead-based paint or
35 hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she
36 received the above information, and (6) signatures (dated) by both parties certifying the accuracy
37 of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).

38
39 10. Respondent is, and at all times relevant to this Complaint has been, the owner, as
40 that term is defined in 40 C.F.R. § 745.103, of the Cherry Hills Apartments property located at
41 2210 E. 3300 S., Salt Lake City, Utah 84109.

1 11. The property located at 2210 E. 3300 S. is “residential real property” within the
2 meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42
3 U.S.C. § 4851b(24), that was constructed before 1978.
4

5 12. The Cherry Hills Apartments property consists of approximately 108 “residential
6 dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard
7 Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.
8

9 13. Respondent has not been providing an EPA-approved lead hazard information
10 pamphlet prior to entering into lease contracts and has not been including a lead warning
11 disclosure statement within its lease contracts.
12

13 14. As part of entering into lease agreements, Respondent has failed to comply with
14 the following requirements:
15

16 a. Respondent failed to provide an EPA-approved lead hazard information pamphlet
17 prior to entering into lease contracts in violation of 40 C.F.R. § 745.107(a)(1), 42
18 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
19

20 b. Respondent failed to include a lead warning statement within the lease contracts
21 before the renters/lessees are obligated or enter into a lease contract in violation of
22 40 C.F.R. § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
23

24 c. Respondent failed to include a statement disclosing the presence of any known
25 lead-based paint and/or lead-based paint hazards (or lack of knowledge of such
26 presence), within the lease contracts before the renters/lessees are obligated or
27 enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C.
28 § 4852d(b)(5), 15 U.S.C. § 2689.
29

30 d. Respondent failed to include a list of any records or reports available to the owner
31 related to lead-based paint or hazards (or a statement that no such records exist)
32 within lease contracts before the renters/lessees are obligated or enter into a lease
33 contract in violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15
34 U.S.C. § 2689.
35

36 e. Respondent failed to include a statement by the renters/lessees that the
37 renters/lessees received the information described above in violation 40 C.F.R.
38 § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
39

40 f. Respondent failed to include the signature of the lessor and lessee certifying to the
41 accuracy of the their statements, to the best of their knowledge along with the
42 dates of signature, in violation 40 C.F.R. § 745.113(b)(6), 42 U.S.C.
43 § 4852d(b)(5), 15 U.S.C. § 2689.

1
2 **PROPOSED CIVIL PENALTY**
3

4 15. The Residential Lead Hazard Act and TSCA, as amended by subsequent penalty
5 adjustment law, authorize the assessment of a civil penalty of up to \$11,000 for each violation of
6 the EPA regulations. In determining the amount of any civil penalty assessed, EPA is required to
7 take into account the nature, circumstances, extent and gravity of the violation or violations
8 alleged and, with respect to the violator, ability to pay, effect on ability to continue to do
9 business, any history of prior such violations, the degree of culpability, and such other factors as
10 justice may require. **EPA proposes that a penalty of Six Thousand One Hundred and**
11 **Eighty-Seven Dollars and Fifty Cents (\$6,188.00)** be assessed against Respondent for the
12 violations alleged above.
13

14 16. EPA calculates penalties through the application of a national enforcement
15 response policy that provides a rational, consistent and equitable calculation methodology for
16 applying the statutory factors to particular cases. As discussed in the policy, the severity of each
17 violation alleged in the complaint is based on the extent to which each violation impairs the
18 ability of a lessee to assess information regarding hazards associated with lead-based paint, and
19 precludes the lessee from making a fully informed decision whether to lease the housing or take
20 appropriate measures to protect against lead-based paint hazards.
21

22 17. The penalty was calculated using the Section 1018 of Title X of the Residential
23 Lead-Based Paint Hazard Reduction Act – Disclosure Rule Enforcement Response Policy (ERP),
24 dated February 2000, a copy of which is enclosed.
25

26 Nature, Circumstances, Extent and Gravity of Violations
27

28 The nature of the violations is hazard assessment, as discussed on page 9 of the ERP. The
29 circumstance level of the violations ranged from Level 1 to Level 6, based on the circumstance
30 level matrix in Appendix B of the ERP. The extent level of the violations was minor, based on
31 the extent level matrix on page B-4 of the ERP. Using the gravity-based penalty matrix on page
32 B-4 of the ERP, which combines the circumstance and extent level for each Count, the gravity-
33 based penalty amount is \$4,950.00.
34

35 Statutory Factors
36

37 Ability to pay/ability to continue in business: EPA does not have any information on the
38 Respondent's ability to pay. No adjustment has been made using this factor.
39

40 History of prior violations: This factor only adjusts the penalty upward. No history of prior
41 violations found, so no adjustment has been made using this factor
42

1 Degree of culpability: The Residential Lead Hazard Act has been in effect since 1996. The
2 Respondent should have had sufficient knowledge to recognize the hazard created by his
3 conduct, and/or significant control over the situation to avoid committing the violation. A notice
4 of noncompliance was issued to Respondent on or about July 30, 2003. EPA has increased the
5 penalty by 25%.

6
7 Other factors as justice may require:

8
9 No adjustments made at this time regarding these factors.

10
11 **The total adjusted penalty is \$6,188.00.**

12
13 18. The ALJ is not bound by EPA's penalty policy nor the penalty proposed in the
14 Complaint and may assess a penalty above the proposed amount, up to the maximum amount
15 authorized by the statute.
16
17


1 **In the Matter of: Cherry Hills Apartments Business Trust**

2 **Docket No.:** TSCA-08-2007-10


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5 To discuss settlement or ask any questions you may have about this process, please
6 contact Eduardo Quintana, Senior Enforcement Attorney, at the number or address below.

7
8 United States Environmental Protection Agency
9 Region 8, Office of Enforcement, Compliance and
10 Environmental Justice, Complainant

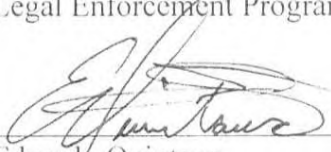
11
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13
14
15 Date: 9/20/07

16 By: 
17 Martin Hestmark, Director
18 Technical Enforcement Program

19
20
21 Date: 20 September 2007

22 By: 
23 Michael T. Risner, Director
24 David J. Janik, Supervisory Attorney
25 Legal Enforcement Program

26
27 Date: 9/19/2007

28 
29 Eduardo Quintana,
30 Senior Enforcement Attorney
31 Legal Enforcement Program
32 U.S.E.P.A. Region 8
33 1595 Wynkoop Street (ENF-I.)
34 Denver, CO 80202-1129
35 303.312.6924
36 1.800.227.6924; ext. 312-6924

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CERTIFICATION OF SERVICE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

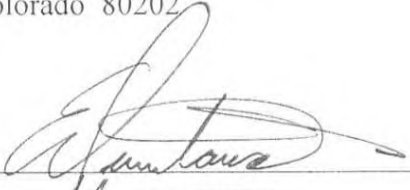
I hereby certify that on this 25 day of September, 2007, a copy of the foregoing Penalty Complaint and Notice of Opportunity for Hearing, with enclosures was served by certified mail, return receipt requested to:

Mr. Shane Wade
Cherry Hills Apartments Business Trust
2389 E. 6895 S.
Cottonwood Heights, UT 84121

The original and one copy was hand-delivered to:

Tina Artemis
Region 8 Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

Date: _____

Signature:  _____

Name and Title: attorney _____