



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 14 2011

REPLY TO THE ATTENTION OF:
L-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7665 9185

Mrs. Leticia Gomez
1957 South 29th Street
Milwaukee, Wisconsin 53215

Re: In the Matter of Leticia Gomez, No: **TSCA-05-2011-0019**

Dear Mrs. Gomez:

Enclosed is a complaint filed by the U.S. Environmental Protection Agency, Region 5 against you, under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact Ann Coyle, Associate Regional Counsel at (312) 886-2248.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2011-0019

Leticia Gomez) Proceeding to Assess a Civil Penalty
Milwaukee, Wisconsin,) Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)
Respondent.)

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SEP 14 2011

Complaint

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Leticia Gomez, a sole proprietor doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead

poisoning are mandatory disclosure and notification requirements for residential rentals and sales. Section 1018 of the Act, 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. EPA promulgated regulations codified at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with the Disclosure Rule by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing. 40 C.F.R. § 745.100.

7. 40 C.F.R. § 745.103 defines target housing 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.

8. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

9. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

10. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

11. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1); a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing with any additional supporting information available, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards; a list of any records or reports available to the lessor that have been provided to the lessee regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records are available; a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements to the best of their knowledge.

12. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing or refusing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

13. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997, through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

General Allegations

14. Complainant incorporates paragraphs 1 through 13 of this Complaint as if set forth in this paragraph.

15. Between at least April 1, 2007, and June 11, 2007, Respondent owned residential dwellings at 1645 and 1645A S. 17th Street, Milwaukee, Wisconsin (Respondent's Properties).

16. Respondent's Properties were constructed prior to 1978.

17. Respondent's Properties, and each unit within Respondent's Properties, are "target housing" as defined in 40 C.F.R. § 745.103.

18. On the following dates, Respondent, either directly or through her authorized agent, entered into the following two written lease agreements (contracts) with individuals for the lease of units in Respondent's residential dwellings, located in Milwaukee, Wisconsin:

Address	Date Lease Entered
1645 S. 17th Street	4/1/2007
1645A S. 17th Street	6/11/2007

19. Each of the two contracts referenced in paragraph 18, above, covered a term of occupancy greater than 100 days.

20. Between April 1, 2007, and June 11, 2007, Respondent offered for lease her residential dwellings, and individuals entered into contracts on the dates listed in paragraph 18, above, to lease those dwellings.

21. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103.

22. Each individual who signed a lease to pay rent in exchange for occupancy of a unit or dwelling, referenced in paragraph 18, above, became a "lessee" as defined in 40 C.F.R. § 745.103.

23. On July 6, 2011, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. EPA asked Respondent to submit specific financial documents if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty.

24. On approximately July 8, 2011, Respondent received the pre-filing notice letter referred to in paragraph 23, above. On July 16, 2011, Respondent replied to the letter via electronic mail and asserted an inability to pay a penalty but did not provide any documents or other factual information supporting her position.

25. On August 2, 2011, by electronic mail, Respondent said she would provide EPA additional information; however, EPA has not received any financial information from Respondent as of this filing. Complainant has considered all of the information provided by Respondent in assessing the alleged violations and proposing a penalty.

26. Complainant obtained information that shows Respondent owns the following properties, all in Milwaukee, Wisconsin: 1645 South 17th Street, with an approximate tax value of \$76,400; 1966 (-A) South 12th Street, with an approximate tax value of \$54,900; 1424 South 31st Street, with an approximate tax value of \$90,100; 2013-2015 West Rogers Street, with an approximate tax value of \$90,400; and 1630-1632 South 7th Street, with an approximate tax value of \$110,400.

27. Respondent has an ability to pay the proposed penalty of \$34,300.

Counts 1 and 2

28. Complainant incorporates paragraphs 1 through 27 of this Complaint as if set forth in this paragraph.

29. **Count 1:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated April 1, 2007, for 1645 S. 17th Street, Milwaukee, Wisconsin, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1).

30. **Count 2:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated June 11, 2007, for 1645A S. 17th Street, Milwaukee, Wisconsin, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1).

31. Respondent's failure to include, either within each contract or as an attachment, a Lead Warning Statement for each leasing transaction referred to in paragraphs 29 and 30 above, constitutes two violations of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 3 and 4

32. Complainant incorporates paragraphs 1 through 27 of this Complaint as if set forth in this paragraph.

33. **Count 3:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated April 1, 2007, for 1645 S. 17th Street, Milwaukee, Wisconsin, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

34. **Count 4:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated June 11, 2007, for 1645A S. 17th Street,

Milwaukee, Wisconsin, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

35. Respondent's failure to include, either within each contract or as an attachment, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased or a lack of knowledge of such presence for each leasing transaction referred to in paragraphs 33 and 34, above, constitutes two violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 5 and 6

36. Complainant incorporates paragraphs 1 through 27 of this Complaint as if set forth in this paragraph.

37. **Count 5:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated April 1, 2007, for 1645 S. 17th Street, Milwaukee, Wisconsin, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

38. **Count 6:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated June 11, 2007, for 1645A S. 17th Street, Milwaukee, Wisconsin, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

39. Respondent's failure to include, either within each contract or as an attachment, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee, or a statement that no

such records are available, for each leasing transaction referred to in paragraphs 37 and 38, above, constitutes two violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 7 and 8

40. Complainant incorporates paragraphs 1 through 27 of this Complaint as if set forth in this paragraph.

41. **Count 7:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated April 1, 2007, for 1645 S. 17th Street, Milwaukee, Wisconsin, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

42. **Count 8:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated June 11, 2007, for 1645A S. 17th Street, Milwaukee, Wisconsin, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

43. Respondent's failure to include, either within each contract or as an attachment, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 for each leasing transaction referred to in paragraphs 41 and 42, above, constitutes two violations of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 9 and 10

44. Complainant incorporates paragraphs 1 through 27 of this Complaint as if set forth in this paragraph.

45. **Count 9:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated April 1, 2007, for 1645 S. 17th Street, Milwaukee, Wisconsin, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

46. **Count 10:** Respondent failed to include, either within the contract or as an attachment to the contract to lease target housing dated June 11, 2007, for 1645A S. 17th Street, Milwaukee, Wisconsin, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

47. Respondent's failure to include, either within each contract or as an attachment, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures for each leasing transaction referred to in paragraphs 45 and 46, above, constitutes two violations of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Proposed Civil Penalty

48. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint as follows:

Count 1

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)	\$6,450
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Count 2

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)	\$6,450
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Count 3

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2) \$5,160

Count 4

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2) \$5,160

Count 5

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3) \$1,680

Count 6

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3) \$ 1,680

Count 7

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4) \$ 3,220

Count 8

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4) \$3,220

Count 9

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6) \$640

Count 10

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6) \$ 640

Total Proposed Civil Penalty \$34,300

49. In determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

50. EPA calculates penalties by applying its Section 1018 - Disclosure Rule Enforcement Response Policy, dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

51. As stated in paragraph 23, above, by letter dated July 6, 2011, EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of Section 1018 of the Act and that Section 1018 authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint, and to submit specific financial documents if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty.

EPA twice requested that Respondent submit information so EPA could factually consider the claimed inability to pay a penalty. Respondent has not provided any information. EPA has developed information reflecting that Respondent owns property valued at

approximately \$422,200. In developing the proposed penalty, EPA has considered all of the available financial information.

Rules Governing This Proceeding

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Ann Coyle to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Coyle at (312) 886-2248. Her address is:

Ann Coyle (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. Coyle and to:

Christine Anderson (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that she is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that she has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To

request an informal settlement conference, Respondent may contact Ms. Coyle at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to comply with TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondent in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

Date

9/13/11


Margaret M. Guerriero
Director
Land and Chemicals Division

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SEP 14 2011
**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY,**

CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Complaint of the civil administrative action involving Mrs. Leticia Gomez, was filed on September 14, 2011, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7009 1680 0000 7665 9185, along with a copy each of the to:

Mrs. Leticia Gomez
1957 South 29th Street
Milwaukee, Wisconsin 53215

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and forwarded intra-Agency copies to:

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Ann Coyle, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD

Frederick Brown
Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2011-0019