

# EASTMAN & SMITH LTD.

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*Established 1844*

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October 10, 2011

**VIA FEDERAL EXPRESS**

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

RECEIVED  
OCT 11 2011

Re: **In the Matter of Ronald R. Underwood**  
**Docket No. TSCA-05-2011-0016**  
Our File No: U183/195555

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Dear Sir or Madam:

I enclose herewith for filing an original and two (2) copies of *Respondent's Answer to Proceeding to Assess a Civil Penalty Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)* regarding the above-referenced matter.

I have also enclosed a self-addressed, stamped envelope for the return of a file-stamped copy of Respondent's Answer.

Please contact our office if you have any questions.

Very truly yours,

EASTMAN & SMITH LTD.

Joseph A. Gregg

JAG/ksw/jlr  
Enclosures

cc: Mr. Steven P. Kaiser, Associate Regional Counsel (w/enc.)  
Mr. and Mrs. Ronald Underwood (w/enc.)

Columbus

Toledo

Findlay

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Ronald R. Underwood  
Elmore, Ohio**

**Respondent**

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PROTECTION AGENCY

) **Docket No. TSCA-05-2011-0016**

) **Respondent's Answer to Proceeding to  
Assess a Civil Penalty Under Section 16(a)  
of the Toxic Substances Control Act, 15  
U.S.C. § 2615(a) and Request for Hearing  
and Settlement Conference**

Respondent, the Ronald R. Underwood Trust (hereinafter "Respondent"), by and through its attorney, Joseph A. Gregg, for its answer to the Complaint, admits, denies, alleges and avers as follows:

**Complaint**

1. Paragraph 1 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.
2. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments as set forth in Paragraph 2 of the Complaint and accordingly denies those averments for lack of knowledge.
3. Respondent admits the averments as set forth in Paragraph 3 of the Complaint.

**Statutory and Regulatory Background**

4. Paragraph 4 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.
5. Paragraph 5 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

6. Paragraph 6 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

7. Paragraph 7 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

8. Paragraph 8 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

9. Paragraph 9 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

10. Paragraph 10 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

11. Paragraph 11 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

12. Paragraph 12 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

13. Paragraph 13 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are denied.

#### **General Averments**

14. Respondent, for its response to Paragraph 14, incorporates by reference the responses contained in paragraphs 1 through 13.

15. Respondent denies the averments set forth in Paragraph 15 of the Complaint.

16. Respondent denies the averments set forth in Paragraph 16 of the Complaint.

17. Respondent denies the averments set forth in Paragraph 17 of the Complaint.

18. Respondent admits the averments as set forth in Paragraph 18 of the Complaint.

19. Respondent admits, upon information and belief, that on August 21, 2008, two individuals purporting to be representatives of EPA and HUD conducted an inspection at Ronald R. Underwood's home office. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining averments as set forth in Paragraph 19 of the Complaint and accordingly denies those averments for lack of knowledge.

20. Respondent denies the averments set forth in Paragraph 20 of the Complaint.

21. Respondent denies the averments set forth in Paragraph 21 of the Complaint.

22. Respondent denies the averments set forth in Paragraph 22 of the Complaint.

23. Respondent admits the averments of Paragraph 23 of the Complaint.

24. Respondent denies the averments set forth in Paragraph 24 of the Complaint.

25. Respondent admits receipt of the August 4, 2011, letter issued by EPA, the contents of which speak for itself. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining averments set forth in Paragraph 25 of the Complaint and accordingly denies those averments for lack of knowledge.

26. Respondent admits receipt of the August 4, 2011, letter issued by EPA, the contents of which speak for itself. Respondent avers that six days later, on August 10, 2011, Respondent's attorney sent a letter to EPA asking for more detail regarding the alleged violations cited in EPA's August 10, 2011 letter and that the Agency subsequently responded by letter dated August 19, 2011. The Complaint, herein, was subsequently filed September 8, 2011 only approximately one month after EPA first contacted Respondent regarding an inspection conducted *three years* prior thereto. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining averments as set forth in Paragraph 26 of the Complaint and accordingly denies those averments for lack of knowledge.

27. Respondent denies the averments set forth in Paragraph 27 of the Complaint.

**Counts 1 through 3**

28. Respondent, for its response to Paragraph 28, incorporates by reference the responses contained in paragraphs 1 through 27.

29. **Count 1:** Respondent denies the averments set forth in Paragraph 29 of the Complaint.

30. **Count 2:** Respondent denies the averments set forth in Paragraph 30 of the Complaint.

31. **Count 3:** Respondent denies the averments set forth in Paragraph 31 of the Complaint.

32. Respondent denies the averments set forth in Paragraph 32 of the Complaint.

**Counts 4 through 6**

33. Respondent, for its response to Paragraph 33, incorporates by reference the responses contained in paragraphs 1 through 32.

34. **Count 4:** Respondent denies the averments set forth in Paragraph 34 of the Complaint.

35. **Count 5:** Respondent denies the averments set forth in Paragraph 35 of the Complaint.

36. **Count 6:** Respondent denies the averments set forth in Paragraph 36 of the Complaint.

37. Respondent denies the averments set forth in Paragraph 37 of the Complaint.

**Counts 7 through 9**

38. Respondent, for its response to Paragraph 38, incorporates by reference the responses contained in paragraphs 1 through 37.

39. **Count 7:** Respondent denies the averments set forth in Paragraph 39 of the Complaint.

40. **Count 8:** Respondent denies the averments set forth in Paragraph 40 of the Complaint.

41. **Count 9:** Respondent denies the averments set forth in Paragraph 41 of the Complaint.

42. Respondent denies the averments set forth in Paragraph 42 of the Complaint.

**Counts 10 through 12**

43. Respondent, for its response to Paragraph 43, incorporates by reference the responses contained in paragraphs 1 through 42.

44. **Count 10:** Respondent denies the averments set forth in Paragraph 44 of the Complaint.

45. **Count 11:** Respondent denies the averments set forth in Paragraph 45 of the Complaint.

46. **Count 12:** Respondent denies the averments set forth in Paragraph 46 of the Complaint.

47. Respondent denies the averments set forth in Paragraph 47 of the Complaint.

**Counts 13 through 15**

48. Respondent, for its response to Paragraph 48, incorporates by reference the responses contained in paragraphs 1 through 47.

49. **Count 13:** Respondent denies the averments set forth in Paragraph 49 of the Complaint.

50. **Count 14:** Respondent denies the averments set forth in Paragraph 50 of the Complaint.

51. **Count 15:** Respondent denies the averments set forth in Paragraph 51 of the Complaint.

52. Respondent denies the averments set forth in Paragraph 52 of the Complaint.

#### **Proposed Civil Penalty**

53. Respondent admits, upon information and belief, that Complainant has proposed certain civil penalties as set out in Count 1 through Count 15, which proposed penalties have no valid basis in fact or law, are unlawful, unreasonable, arbitrary and capricious, and which Respondent has no ability to pay. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining averments as set forth in Paragraph 53 of the Complaint and accordingly denies those averments for lack of knowledge.

54. Paragraph 54 is a statement that contains no averment of fact that requires an admission or denial. To the extent it does, the averments of this paragraph are admitted as a partial list of such factors.

55. Respondent is without knowledge sufficient to form a belief as to how EPA calculates penalties, and therefore denies the averment of Paragraph 55 of the Contract. Further pleading Respondent avers that to the extent EPA calculates penalties by relying on the Response Policy, that Response Policy is mere guidance, without legal force or effect, and is not a statute or regulation.

56. Respondent admits receipt of the August 4, 2011, letter issued by EPA, which document speaks for itself. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining averments as set forth in Paragraph 56 of the Complaint and accordingly denies those averments for lack of knowledge. Specifically, Respondent denies it has the ability to pay the penalty proposed by EPA and avers that EPA did not give it sufficient time to supply the agency documentation of same when *three years* after a first-ever inspection it gave Respondent only approximately *one month* to respond.

#### **Request for a Hearing**

57. Respondent requests a hearing on the issues raised by the Complaint.

58. Respondent contends that it is entitled to Judgment as a matter of law.

#### **Settlement Conference**

59. Respondent requests an informal settlement conference to discuss the facts of the proceeding and to discuss settlement.

60. Respondent denies all averments of the Complaint not herein specifically admitted to be true.

#### **Affirmative Defenses**

1. Respondent had no knowledge of the existence and requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 prior to August 21, 2008.

2. The purported representatives of EPA and HUD who conducted an inspection of Ronald Underwood's house on August 21, 2008 told Respondent that they were there to inform and educate Respondent about the law so that Respondent could get into compliance.

3. It is unreasonable, unlawful, arbitrary and capricious and results in a gross overstatement of the nature of such a violation to consider a Respondent's failure to comply with

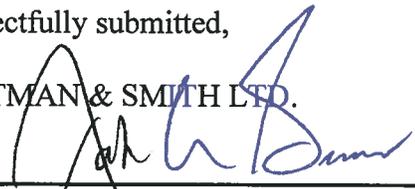
the Lead Warning Statement, discharge statement, list of records/reports, statement by a lessee affirming receipt or certificate with respect to accuracy, as separate violations for purposes of calculating a proposed penalty.

4. EPA's reliance on the Response Policy to calculate a proposed civil penalty in unlawful, unreasonable, arbitrary and capricious, not based on statute or regulation, and results in a gross over-calculation of a fair and reasonable proposed penalty.

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Respectfully submitted,

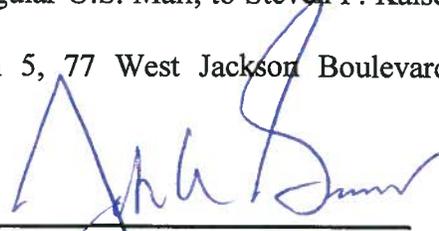
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Attorneys for Respondent  
Ronald R. Underwood Trust

### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Respondent's Answer to Complaint Proceeding to Assess a Civil Penalty Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) and Request for Hearing and Settlement Conference* was sent by Federal Express on October 10, 2011, to the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and by regular U.S. Mail, to Steven P. Kaiser (C14-J), Associate Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

  
\_\_\_\_\_  
Attorney for Respondent  
Ronald R. Underwood Trust