



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In Reply Refer To Mail Code: 3RC50

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alfonso D'Amico
105 Lakewood Drive
Canonsburg PA 15317-1530

SEP 27 2012

Mr. Alfonso D'Amico
205 Grant Street
Canonsburg PA 15317-1530

Re: Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act
Complaint and Notice of Opportunity for Hearing under the Toxic Substances Control Act
EPA Docket No. TSCA-03-2012-0268

Dear Mr. D'Amico:

Enclosed please find a copy of the Complaint and Notice of Opportunity for Hearing filed today with the Regional Hearing Clerk concerning your alleged violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.* The Complaint is based on alleged violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*, Section 409 of TSCA, 15 U.S.C. § 2689, and implementing regulations codified at 40 C.F.R. Part 745, Subpart F, relating to the disclosure of lead-based paint and lead based-paint hazards upon the sale or lease of residential property. The Complaint and Notice of Opportunity for Hearing should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice by specific Answer within thirty (30) days of receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer shall result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing a penalty proposed by the U.S. Environmental Protection Agency ("EPA") without further proceedings.

You may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in the Answer to this Complaint. Whether or not a hearing is requested you may request an informal settlement conference to discuss resolution of this case. The attorney assigned to this case is Benjamin Cohan, Senior Assistant Regional Counsel. You may have your counsel contact Mr. Cohan on your behalf as follows:

Benjamin M. Cohan (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Mr. Cohan can be reached by telephone at (215) 814-2618.

Please see the enclosed "Information for Small Businesses" sheet, which provides information on compliance assistance and on contacting the Small Business Regulatory Enforcement and Fairness Act ("SBREFA") Ombudsman to comment on federal enforcement and compliance activities. Any decision to participate in such program or to seek compliance assistance does not constitute a request for a settlement conference, relieve you of your obligation to file a timely answer to the Complaint, or create any new rights or defenses under law. Nor will such an action affect EPA's enforcement of the Complaint. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process, as set forth in the Consolidated Rules of Practice in 40 C.F.R. Part 22. The SBREFA Ombudsman does not participate in the resolution of EPA's enforcement action.

Sincerely,



Abraham Ferdas, Director
Land and Chemicals Division

Enclosures

cc: James R. Jefferies, Esq.
Demian Ellis (w/o enclosures)
Benjamin M. Cohan (w/o enclosures)



112 Boyle Ave.)
Canonsburg, PA 15317)
)
517 Highfield Ave.)
Canonsburg, PA 15317)
)
112 ½ Boyle Ave.)
Canonsburg, PA 15317)
)
245 Grace Ave.)
Canonsburg, PA 15317)
)
519 Highfield Ave.)
Canonsburg, PA 15317)
)
)
)
Target Housing.)

ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators and this authority has been further delegated in U.S. EPA Region III to, *inter alia*, the Director of the Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A.

The Respondent in this action is Mr. Alfonso D'Amico ("Respondent"). Respondent D'Amico has a residential address at 105 Lakewood Drive, Canonsburg, PA 15317, with a mailing address of 205 Grant Street, Canonsburg, PA 15317. By issuing this Complaint, Complainant alleges violations by Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the "Disclosure Rule"), in connection with fifteen (15) written lease agreements associated with fifteen (15) target housing units, described more fully in Paragraphs 16 - 64 of this Complaint.

Failure to comply with Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.

II. JURISDICTION, BACKGROUND AND DEFINITIONS

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689; Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d; 40 C.F.R. Part 745, Subpart F; and 40 C.F.R. §§ 22.1(a)(5) and 22.4.
2. Pursuant to 40 C.F.R. § 745.103, the term "lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm^2] or 0.5 percent by weight.

3. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.
4. Pursuant to 40 C.F.R. § 745.103, the term “lessee” means 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.
5. Pursuant to 40 C.F.R. § 745.103, the term “owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.
6. Pursuant to 40 C.F.R. § 745.103, the term “lessor” means 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.
7. Pursuant to Section 1004(23) of the RLBPHRA, 42 U.S.C. § 4851b(23), Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means: (1) A single-family dwelling, including attached structures such as porches and stoops; or (2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used

or occupied, in whole or in part, as the residence of one or more persons.

8. Pursuant to Section 1004(24) of the RLBPHRA, 42 U.S.C. § 4851b(24), and Section 401(15) of TSCA, 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

9. Pursuant to Section 1004(27) of the RLBPHRA, 42 U.S.C. § 4851b(27), Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means 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.

10. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following language: “Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”

11. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-

based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.

12. Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall include, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

13. Pursuant to 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.113(b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686.

14. Pursuant to 40 C.F.R. § 745.113(b)(6), each contract to lease target housing shall include, as an attachment or within the contract, the signatures of the lessors and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

15. The enforcement provisions of 40 C.F.R. § 745.118(e) and (f) state that:

* * *

(e) Failure or refusal to comply with [40 C.F.R.] § 745.107 (disclosure requirements for sellers and lessors), [40 C.F.R.] § 745.110 (opportunity to conduct an evaluation), [40 C.F.R.] § 745.113 (certification and acknowledgment of disclosure) or [40 C.F.R.] § 745.115 (agent responsibilities) is a violation of [RLBPHRA Section 1018(b)(5),] 42 U.S.C. § 4852d(b)(5) and of TSCA section 409 (15 U.S.C. § 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. § 2615) for each violation. For purposes of enforcing this subpart [40 C.F.R. Part 745, Subpart F], the penalty for each violation applicable under 15 U.S.C. § 2615 shall not be more than \$11,000 for all violations occurring after July 28, 1997 or on or before January 12, 2009. [This amount was raised to be not more than \$16,000 for violations occurring after January 12, 2009, as set forth in 40 C.F.R. Part 19.]

III. GENERAL ALLEGATIONS

16. At all times relevant to the violations alleged in this Complaint, Alfonso D'Amico, (hereinafter "Respondent") has been a "person" within the meaning of such term in Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689.

17. At all times relevant to the violations alleged in this Complaint, Respondent was an "owner" and "lessor" of "residential real propert[ies]" including residential dwellings located at 541 Euclid Ave., Apt.3, Canonsburg, PA 15317 ("541 Euclid Ave. Apt. 3 Property"), 541 Euclid Ave., Apt.2, Canonsburg, PA 15317 ("541 Euclid Ave. Apt. 2 Property"), 536 W. Pike Street, Meadowlands, PA 15347 ("536 W. Pike Street Property"), 419 Duquesne Ave., Front, Canonsburg, PA 15317 ("419 Duquesne Ave., Front Property"), 446 Highfield Ave. Canonsburg, PA, 15317 ("446 Highfield Ave. Property"), 205 Bernstein Ave., Canonsburg, PA 15317 ("205 Bernstein Ave. Property"), 540 Duquesne Ave., Front, Canonsburg, PA 15317 ("540 Duquesne Ave., Front Property"), 540 Duquesne Ave., Rear, Canonsburg, PA 15317 ("540 Duquesne Ave., Rear Property"), 8 Birch Way, Muse, PA 15350 ("8 Birch Way Property"), 121 Murdock Street, Apt. 1, Canonsburg, PA 15317 ("121 Murdock Street, Apt. 1 Property"), 112 Boyle Ave., Canonsburg, PA 15317 ("112 Boyle Ave. Property"), 517 Highfield Ave., Canonsburg, PA 15317 ("517 Highfield Ave. Property"), 112 ½ Boyle Ave., Canonsburg, PA 15317 ("112 ½ Boyle Ave. Property"), 245 Grace Ave. Canonsburg, PA 15317 ("245 Grace Ave. Property"), and 519 Highfield Ave., Canonsburg, PA 15317 ("519 Highfield Ave. Property"), or (collectively "the Properties").

18. The "residential dwellings" on the Properties were constructed prior to 1978, and at all times relevant to the allegations in this Complaint, none of the dwellings was "housing for the

elderly” or persons with disabilities or a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. § 745.103.

19. At all times relevant to the allegations in this Complaint, the “residential dwellings” on the Properties were “*target housing*,” within the meaning of Section 1004(27) of RLBPHRA, 42 U.S.C. § 4851b(27), Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

20. Respondent entered into a written agreement, executed on or about April 1, 2010, to lease a “residential dwelling” known as 541 Euclid Ave. Apt. 3, to an individual “lessee”, and was a “lessor” with respect to such lease transaction (hereinafter, the “541 Euclid Ave. Apt. 3 Lease Transaction”) as those terms are defined in 40 C.F.R. § 745.103.

21. The 541 Euclid Ave. Apt. 3 Lease Transaction was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

22. The 541 Euclid Ave. Apt. 3 Lease Transaction was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

23. Respondent entered into a written agreement, executed on or about March 1, 2008, to lease a “residential dwelling” known as 541 Euclid Ave. Apt. 2 to an individual “lessee”, and was a “lessor” with respect to such lease transaction (hereinafter, the “541 Euclid Ave. Apt. 2 Lease Transaction”) as those terms are defined in 40 C.F.R. § 745.103.

24. The 541 Euclid Ave. Apt. 2 Lease Transaction was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

25. The 541 Euclid Ave. Apt. 2 Lease Transaction was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under

[40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

26. Respondent entered into a written agreement, executed on or about April 1, 2009, to lease a "residential dwelling" known as 536 W. Pike Street to an individual "lessee", and was a "lessor" with respect to such lease transaction (hereinafter, the "536 W. Pike Street Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

27. The 536 W. Pike Street Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

28. The 536 W. Pike Street Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

29. Respondent entered into a written agreement, executed on or about May 1, 2010, to lease a "residential dwelling" known as 419 Duquesne Ave., Front, to an individual "lessee", and was a "lessor" with respect to such lease transaction (hereinafter, the "419 Duquesne Ave., Front Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

30. The 419 Duquesne Ave., Front Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

31. The 419 Duquesne Ave., Front Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

32. Respondent entered into a written agreement, executed on or about January 1, 2007, to lease a "residential dwelling" known as 446 Highfield Ave. to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "446 Highfield Ave. Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

33. The 446 Highfield Ave. Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

34. The 446 Highfield Ave. Lease Transaction was not a "[r]enewal [] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

35. Respondent entered into a written agreement, executed on or about November 1, 2009, to lease a "residential dwelling" known as 205 Bernstein Ave. to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "205 Bernstein Ave. Lease Transaction") as that term is defined in 40 C.F.R. § 745.103.

36. The 205 Bernstein Ave. Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

37. The 205 Bernstein Ave. Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

38. Respondent entered into a written agreement, executed on or about May 1, 2010, to lease a "residential dwelling" known as 540 Duquesne Ave., Front to individual "leesee[s]", and was

a “lessor” with respect to such lease transaction (hereinafter, the “540 Duquesne Ave., Front Lease Transaction”) as those terms are defined in 40 C.F.R. § 745.103.

39. The 540 Duquesne Ave., Front Lease Transaction was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

40. The 540 Duquesne Ave., Front Lease Transaction was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

41. Respondent entered into a written agreement, executed on or about April 25, 2008, to lease a “residential dwelling” known as 540 Duquesne Ave., Rear, to individual “leesee[s]”, and was a “lessor” with respect to such lease transaction (hereinafter, the “540 Duquesne Ave., Rear Lease Transaction”) as those terms are defined in 40 C.F.R. § 745.103.

42. The 540 Duquesne Ave., Rear Lease Transaction was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

43. The 540 Duquesne Ave., Rear Lease Transaction was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

44. Respondent entered into a written agreement, executed on or about May 1, 2010, to lease a “residential dwelling” known as 8 Birch Way, to individual “leesee[s]”, and was a “lessor”

with respect to such lease transaction (hereinafter, the "8 Birch Way Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

45. The 8 Birch Way Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

46. The 8 Birch Way Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

47. Respondent entered into a written agreement, executed on or about August 1, 2009, to lease a "residential dwelling" known as 121 Murdock Street, Apt. 1, to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "121 Murdock Street, Apt. 1 Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

48. The 121 Murdock Street, Apt. 1 Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

49. The 121 Murdock Street, Apt. 1 Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

50. Respondent entered into a written agreement, executed on or about August 1, 2009, to lease a "residential dwelling" known as 112 Boyle Ave., to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "112 Boyle Ave. Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

51. The 112 Boyle Ave. Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

52. The 112 Boyle Ave. Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

53. Respondent entered into a written agreement, executed on or about August 1, 2009, to lease a "residential dwelling" known as 517 Highfield Ave., to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "112 Boyle Ave. Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

54. The 517 Highfield Ave. Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

55. The 517 Highfield Ave. Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

56. Respondent entered into a written agreement, executed on or about April 15, 2010, to lease a "residential dwelling" known as 112 ½ Boyle Ave., to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "112 ½ Boyle Ave. Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

57. The 112 ½ Boyle Ave. Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

58. The 112 ½ Boyle Ave. Lease Transaction was not a "[r]enewal of [an] existing lease . . .

in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

59. Respondent entered into a written agreement, executed on or about January 1, 2008, to lease a "residential dwelling" known as 245 Grace Ave., to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "245 Grace Ave. Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

60. The 245 Grace Ave. Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

61. The 245 Grace Ave. Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

62. Respondent entered into a written agreement, executed on or about August 1, 2009, to lease a "residential dwelling" known as 519 Highfield Ave., to individual "leesee[s]", and was a "lessor" with respect to such lease transaction (hereinafter, the "519 Highfield Ave. Lease Transaction") as those terms are defined in 40 C.F.R. § 745.103.

63. The 519 Highfield Ave. Lease Transaction was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).

64. The 519 Highfield Ave. Lease Transaction was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

IV. VIOLATIONS

Counts 1 through 10 -- 40 C.F.R. § 113(b)(1)

65. The allegations contained in Paragraphs 1 through 64, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

66. Respondent failed to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as attachments to, or within, the leases for the target housing subject to the 541 Euclid Ave., Apt.2 Lease Transaction, the 536 W. Pike Street Lease Transaction, the 446 Highfield Ave. Lease Transaction, the 205 Bernstein Ave. Lease Transaction, the 540 Duquesne Ave., Rear Lease Transaction, the 121 Murdock Street, Apt. 1 Lease Transaction, the 112 Boyle Ave. Lease Transaction, the 517 Highfield Ave. Lease Transaction, the 245 Grace Ave. Lease Transaction, and the 519 Highfield Ave. Lease Transaction.

67. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the required "Lead Warning Statement", either as attachments to, or within, the leases for the target housing subject to the Lease Transactions set forth in Paragraph 66, above, constitutes ten separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 11 through 20 -- 40 C.F.R. § 113(b)(2)

68. The allegations contained in Paragraphs 1 through 67, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

69. Respondent failed to include a statement disclosing the presence of, along with any additional information available concerning, known lead-based paint and/or lead-based paint

hazards at the following target housing units, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as attachments to, or within, the leases for the target housing subject to the 541 Euclid Ave., Apt.2 Lease Transaction, the 536 W. Pike Street Lease Transaction, the 446 Highfield Ave. Lease Transaction, the 205 Bernstein Ave. Lease Transaction, the 540 Duquesne Ave., Rear Lease Transaction, the 121 Murdock Street, Apt. 1 Lease Transaction, the 112 Boyle Ave. Lease Transaction, the 517 Highfield Ave. Lease Transaction, the 245 Grace Ave. Lease Transaction, and the 519 Highfield Ave. Lease Transaction, as required by 40 C.F.R. § 745.113(b)(2).

70. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include a statement disclosing the presence of, or additional information available concerning, known lead-based paint and/or lead-based paint hazards, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards at the Properties described in paragraph 69, above, either as attachments to, or within, the leases for the target housing subject to the Lease Transactions set forth in paragraph 69, above, constitutes ten separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 21 through 30 -- 40 C.F.R. §745.113(b)(3)

71. The allegations contained in Paragraphs 1 through 70, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

72. Respondent failed to include a list of records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards at the target housing described herein that had been provided to the lessee(s), or to indicate that no such records or reports were available, either as attachments to, or within, the leases for the target housing subject to the 541 Euclid Ave., Apt.2 Lease Transaction, the 536 W. Pike Street Lease Transaction, the 446 Highfield

Ave. Lease Transaction, the 205 Bernstein Ave. Lease Transaction, the 540 Duquesne Ave., Rear Lease Transaction, the 121 Murdock Street, Apt. 1 Lease Transaction, the 112 Boyle Ave. Lease Transaction, the 517 Highfield Ave. Lease Transaction, the 245 Grace Ave. Lease Transaction, and the 519 Highfield Ave. Lease Transaction, as required by 40 C.F.R. § 745.113(b)(3).

73. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to include a list of records or reports available to the lessor pertaining to lead-based paint and/or lead based paint hazards at the target housing described in paragraph 72, above, that have been provided to the lessee(s), or to indicate that no such records or reports were available, either attachments to, or within, the leases for the Lease Transactions set forth in paragraph 72, above, constitutes ten separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 31 through 45 -- 40 C.F.R. §745.113(b)(4)

74. The allegations contained in Paragraphs 1 through 73, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

75. Respondent failed to include a statement by the lessee(s) affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as attachments to, or within, the leases for the target housing subject to the 541 Euclid Ave., Apt.3 Lease Transaction, the 541 Euclid Ave., Apt.2 Lease Transaction, the 536 W. Pike Street Lease Transaction, the 419 Duquesne Ave., Front Lease Transaction, the 446 Highfield Ave. Lease Transaction, the 205 Bernstein Ave. Lease Transaction, the 540 Duquesne Ave. Front Lease Transaction, the 540 Duquesne Ave., Rear Lease Transaction, the 8 Birch Way Lease Transaction, the 121 Murdock Street, Apt. 1

Lease Transaction, the 112 Boyle Ave. Lease Transaction, the 517 Highfield Ave. Lease Transaction, the 112 ½ Boyle Ave. Lease Transaction, the 245 Grace Ave. Lease Transaction, and the 519 Highfield Ave. Lease Transaction, as required by 40 C.F.R. § 745.113(b)(4).

76. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to include a statement by the lessees affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as attachments to, or within, the leases for the target housing subject to the Lease Transactions set forth in paragraph 75, above, constitutes fifteen separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 46 through 60 -- 40 C.F.R. §745.113(b)(6)

77. The allegations contained in Paragraphs 1 through 76, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.

78. Respondent failed to include the signatures of the lessor and lessee, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, either as attachments to, or within, the leases for the target housing subject to the 541 Euclid Ave., Apt.3 Lease Transaction, the 541 Euclid Ave., Apt.2 Lease Transaction, the 536 W. Pike Street Lease Transaction, the 419 Duquesne Ave., Front Lease Transaction, the 446 Highfield Ave. Lease Transaction, the 205 Bernstein Ave. Lease Transaction, the 540 Duquesne Ave. Front Lease Transaction, the 540 Duquesne Ave., Rear Lease Transaction, the 8 Birch Way Lease Transaction, the 121 Murdock Street, Apt. 1 Lease Transaction, the 112 Boyle Ave. Lease Transaction, the 517 Highfield Ave. Lease Transaction, the 112 ½ Boyle Ave. Lease

Transaction, the 245 Grace Ave. Lease Transaction, and the 519 Highfield Ave. Lease Transaction, as required by 40 C.F.R. § 745.113(b)(6).

79. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to include the required signatures and the required certifications, along with the dates of such signatures, as attachments to, or within, the leases for the target housing subject to the Lease Transactions set forth in paragraph 78, above, constitutes fifteen separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

V. PROPOSED CIVIL PENALTY

Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, in the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This maximum amount was adjusted to \$11,000 for each violation occurring after January 30, 1997 and on or before January 12, 2009, and to \$16,000 for violations occurring after January 12, 2009, pursuant to the *Civil Monetary Penalty Inflation Adjustment Rule*, 40 C.F.R. Part 19.

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, 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 matters as justice may require ("statutory factors"). In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and EPA's *Section 1018 Disclosure Rule Final Enforcement Response Policy ("ERP")*, dated

December 2007, a copy of which is enclosed with this Complaint. The *ERP* provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases. The ERP represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the Complainant's civil penalty proposal is contested through the hearing process described below, Complainant is prepared to offer a statutory basis for the elements of the ERP, as well as for the amount and nature of the civil penalty proposed.

Complainant proposes the assessment, against Respondent, of a civil penalty of up to \$11,000 for each violation alleged in this Complaint with respect to the following Properties: 1) 541 Euclid Ave, Apt. 2; 2) 446 highfield Ave.; 3) 540 Duquesne Ave., Rear; and 4) 245 Grace Ave. Complainant proposes the assessment, against Respondent, of a civil penalty of up to \$16,000 for each violation alleged in this Complaint with respect to the remaining Properties set forth in this Complaint. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty amount at this time, but will do so at a later date after an exchange of information has occurred. See, 40 C.F.R. § 22.19(a)(4). As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, any facts and circumstances unknown to Complainant at the time of issuance of this Complaint that become known after the Complaint is issued including Respondent's ability to pay the proposed civil penalty assessed in this Complaint. With respect to Respondent's ability to pay the proposed penalty, it is the Respondent's responsibility to provide to Complainant financial information to support and establish a claim of an inability to pay the proposed penalty. Complainant's proposal of the assessment of a civil penalty against the Respondent does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. §

2412.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of the violations for which the assessment of a civil penalty is sought is provided below. This explanation is based upon the facts known to the Complainant at the time this Complaint is issued, Complainant's consideration of the statutory penalty factors enumerated above and the relevant guidance provided in the ERP.

A. Explanation of Circumstance Level and Extent of Violation

1. Circumstance Levels:

- (a) 40 C.F.R. §§ 745.113(b)(1) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(1) are deemed to represent a "high" level of impairment to a lessee's ability to assess the information required to be disclosed and have been characterized as Circumstance Level 2 violations in the ERP. As a result, the violations alleged in Counts 1 through 10 of this Complaint may be characterized as Circumstance Level 2 violations for purposes of calculating an appropriate penalty.
- (b) 40 C.F.R. § 745.113(b)(2) violations: Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(2) are deemed to represent a "medium" level of impairment to a lessee's ability to assess the information required to be disclosed and are characterized as Circumstance Level 3 violations in the ERP. As a result, the violations alleged in Counts 11 through 20 of this Complaint may be characterized as Circumstance Level 3 violations for purposes of calculating an appropriate penalty.
- (c) 40 C.F.R. §§ 745.113(b)(3) violations: Violations of the disclosure requirements

set forth at 40 C.F.R. § 745.113(b)(3) are deemed to represent a “low” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 5 violations in the ERP. As a result, the violations alleged in Counts 21 through 30 of this Complaint may be characterized as Circumstance Level 5 violations for purposes of calculating an appropriate penalty.

(d) 40 C.F.R. §§ 745.113(b)(4) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(4) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 4 violations in the ERP. As a result, the violations alleged in Counts 31 through 45 of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.

(e) 40 C.F.R. §§ 745.113(b)(6) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(6) are deemed to represent a “low” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 6 violations in the ERP. As a result, the violations alleged in Counts 46 through 60 of this Complaint may be characterized as Circumstance Level 6 violations for purposes of calculating an appropriate penalty.

2. Extent Levels:

a) Major Extent Violations: Defined as “[p]otential for ‘serious’ damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or

certifications to lessees of target housing in which a child under six years of age or pregnant woman lives is considered a "Major Extent" violation under the ERP. At the time of the violations alleged in this Complaint, the complainant neither knew, nor had reason to believe that a pregnant woman or a child under the age of six was present; therefore violations alleged in this Complaint will not be characterized as "Major Extent" violations for purposes of calculating an appropriate penalty at this time.

- b) Significant Extent Violations: Defined as "[p]otential for 'significant' damage to human health or the environment." Failure to provide lead-based paint disclosures and/or certifications to lessees of target housing where the age of the youngest individual is unknown, or where a child over six years of age, but less than eighteen years of age lives is considered a "Significant Extent" violation under the ERP. At the time of the violations alleged in this Complaint, the Respondent failed to provide the disclosure in six (6) leases for target housing in which children of an undetermined age were present, thus making these violations "Significant Extent" violations. These "Significant Extent" violations are alleged in all Counts associated with the 541 Euclid Ave., Apt.3 Property, the 205 Bernstein Ave. Property, the 540 Duquesne Ave. Front Property, the 540 Duquesne Ave. Rear Property, the 112 Boyle Ave. Property, and the 245 Grace Ave. Property.
- c) Minor Extent Violations: Defined as "[p]otential for a 'lesser' amount of damage to human health or the environment." Failure to provide lead-based paint disclosures and/or certifications to lessees who have no children and are not

pregnant women at the time the Disclosure Rule violations occur are considered a “Minor Extent” violations under the ERP. Based on information existing at the time of this Complaint, the Respondent failed to provide disclosure in nine (9) lease transactions to leases where no children were present, thus making these violations “Minor Extent” violations. Therefore, all violations in this Complaint, other than those described in Section V.A.2(b), immediately above, may be characterized as “Minor Extent” violations for purposes of calculating an appropriate penalty.

B. Summary of Penalty Calculation by Count

<u>Count</u>	<u>Lease Transaction</u>	<u>Violations</u>	<u>Circumstance/Extent</u>
1.	541 Euclid Ave., Apt.2	745.113(b)(1)	Level 2, Minor Extent
2.	536 W. Pike Street	745.113(b)(1)	Level 2, Minor Extent
3.	446 Highfield Ave.	745.113(b)(1)	Level 2, Minor Extent
4.	205 Bernstein Ave.	745.113(b)(1)	Level 2, Significant Extent
5.	540 Duquesne Ave., Rear	745.113(b)(1)	Level 2, Significant Extent
6.	121 Murdock Street, Apt. 1	745.113(b)(1)	Level 2, Minor Extent
7.	112 Boyle Ave.	745.113(b)(1)	Level 2, Significant Extent
8.	517 Highfield Ave.	745.113(b)(1)	Level 2, Minor Extent
9.	245 Grace Ave.	745.113(b)(1)	Level 2, Significant Extent
10.	519 Highfield Ave.	745.113(b)(1)	Level 2, Minor Extent
11.	541 Euclid Ave., Apt.2	745.113(b)(2)	Level 3, Minor Extent
12.	536 W. Pike Street	745.113(b)(2)	Level 3, Minor Extent
13.	446 Highfield Ave.	745.113(b)(2)	Level 3, Minor Extent
14.	205 Bernstein Ave.	745.113(b)(2)	Level 3, Significant Extent
15.	540 Duquesne Ave., Rear	745.113(b)(2)	Level 3, Significant Extent
16.	121 Murdock Street, Apt. 1	745.113(b)(2)	Level 3, Minor Extent
17.	112 Boyle Ave.	745.113(b)(2)	Level 3, Significant Extent
18.	517 Highfield Ave	745.113(b)(2)	Level 3, Minor Extent
19.	245 Grace Ave.	745.113(b)(2)	Level 3, Significant Extent
20.	519 Highfield Ave.	745.113(b)(2)	Level 3, Minor Extent
21.	541 Euclid Ave., Apt.2	745.113(b)(3)	Level 5, Minor Extent
22.	536 W. Pike Street	745.113(b)(3)	Level 5, Minor Extent
23.	446 Highfield Ave.	745.113(b)(3)	Level 5, Minor Extent
24.	205 Bernstein Ave.	745.113(b)(3)	Level 5, Significant Extent
25.	540 Duquesne Ave., Rear	745.113(b)(3)	Level 5, Significant Extent
26.	121 Murdock Street, Apt. 1	745.113(b)(3)	Level 5, Minor Extent
27.	112 Boyle Ave.	745.113(b)(3)	Level 5, Significant Extent

28.	517 Highfield Ave	745.113(b)(3)	Level 5, Minor Extent
29.	245 Grace Ave.	745.113(b)(3)	Level 5, Significant Extent
30.	519 Highfield Ave.	745.113(b)(3)	Level 5, Minor Extent
31.	541 Euclid Ave., Apt.3	745.113(b)(4)	Level 4, Significant Extent
32.	541 Euclid Ave., Apt.2	745.113(b)(4)	Level 4, Minor Extent
33.	536 W. Pike Street	745.113(b)(4)	Level 4, Minor Extent
34.	419 Duquesne Ave., Front	745.113(b)(4)	Level 4, Minor Extent
35.	446 Highfield Ave.	745.113(b)(4)	Level 4, Minor Extent
36.	205 Bernstein Ave.	745.113(b)(4)	Level 4, Significant Extent
37.	540 Duquesne Ave. Front	745.113(b)(4)	Level 4, Significant Extent
38.	540 Duquesne Ave., Rear	745.113(b)(4)	Level 4, Significant Extent
39.	8 Birch Way	745.113(b)(4)	Level 4, Minor Extent
40.	121 Murdock Street, Apt. 1	745.113(b)(4)	Level 4, Minor Extent
41.	112 Boyle Ave.	745.113(b)(4)	Level 4, Significant Extent
42.	517 Highfield Ave	745.113(b)(4)	Level 4, Minor Extent
43.	112 ½ Boyle Ave	745.113(b)(4)	Level 4, Minor Extent
44.	245 Grace Ave.	745.113(b)(4)	Level 4, Significant Extent
45.	519 Highfield Ave.	745.113(b)(4)	Level 4, Minor Extent
46.	541 Euclid Ave., Apt.3	745.113(b)(6)	Level 6, Significant Extent
47.	541 Euclid Ave., Apt.2	745.113(b)(6)	Level 6, Minor Extent
48.	536 W. Pike Street	745.113(b)(6)	Level 6, Minor Extent
49.	419 Duquesne Ave., Front	745.113(b)(6)	Level 6, Minor Extent
50.	446 Highfield Ave.	745.113(b)(6)	Level 6, Minor Extent
51.	205 Bernstein Ave.	745.113(b)(6)	Level 6, Significant Extent
52.	540 Duquesne Ave. Front	745.113(b)(6)	Level 6, Significant Extent
53.	540 Duquesne Ave., Rear	745.113(b)(6)	Level 6, Significant Extent
54.	8 Birch Way	745.113(b)(6)	Level 6, Minor Extent
55.	121 Murdock Street, Apt. 1	745.113(b)(6)	Level 6, Minor Extent
56.	112 Boyle Ave.	745.113(b)(6)	Level 6, Significant Extent
57.	517 Highfield Ave	745.113(b)(6)	Level 6, Minor Extent
58.	112 ½ Boyle Ave	745.113(b)(6)	Level 6, Minor Extent
59.	245 Grace Ave.	745.113(b)(6)	Level 6, Significant Extent
60.	519 Highfield Ave.	745.113(b)(6)	Level 6, Minor Extent

VI. NOTICE AND OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against Respondent in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Benjamin Cohan, Senior Assistant Regional Counsel, at:

Office of Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street

Philadelphia, PA 19103-2029.

VII. SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA and the RLBPHRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

If Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Mr. Cohan at (215) 814-2618 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding because a specific penalty is not proposed in the Amended Complaint. See 40 C.F.R. § 22.18(a)(1).

VIII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Land and Chemicals Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Judicial Officer, the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

9/27/12
Date


Abraham Ferdas, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Administrative Complaint and Notice of Opportunity for Hearing (re: Docket No. TSCA-03-2012-0268) was delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified return receipt requested first-class U.S. Mail, to the following persons:

Mr. Alfonso D'Amico
105 Lakewood Drive
Canonsburg PA 15317-1530

Mr. Alfonso D'Amico
205 Grant Street
Canonsburg PA 15317-1530

James R. Jeffries, Esq.
30 South Main Street, Ste. 102
Washington, PA 15301

9/28/12
Date



Benjamin M. Cohan
Sr. Assistant Regional Counsel

RECEIVED
2012 SEP 28 AM 10:00
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA