



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912**

March 3, 2017

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

BY HAND

Re: 5 MF Holding, L.L.C.
Docket No. TSCA-01-2017-0037

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing and a Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen E. Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

cc: Michael Drummond, Member, 5 MF Holding, L. L.C.
Attorney Robert A. D'Alfonso, III



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Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

_____)	
In the Matter of:)	ADMINISTRATIVE COMPLAINT
)	AND
5 MF Holding, L.L.C.)	NOTICE OF
110 Byfield St.)	OPPORTUNITY FOR HEARING
Warwick, RI 02888)	
Respondent)	Docket No. TSCA-01-2017-0037
)	Proceeding under Section 16(a) of the
)	Toxic Substances Control Act,
)	15 U.S.C. § 2615(a)
_____)	

I. STATEMENT OF AUTHORITY

1. Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), issues this administrative Complaint and Notice of Opportunity for Hearing under Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

II. NATURE OF THE ACTION

2. This Complaint notifies 5 MF Holding, L.L.C. (“5 MF” or “Respondent”) that EPA has determined that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Disclosure of Known Lead Based Paint and/or Lead Based Paint Hazards Upon Sale or Lease of Residential Property,” as

set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). EPA seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by EPA of civil and/or criminal penalties.

III. STATUTORY AND REGULATORY BASIS

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead based paint (“LBP”), and that the ingestion of lead from deteriorated or abraded LBP is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of LBP hazards is taken into account in the rental of homes and apartments.

4. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subparts E and F.

5. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act’s transaction requirements is termed “target housing,” and is defined as any housing constructed prior to 1978, excepting housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

6. Pursuant to 40 C.F.R. § 745.103, “lessor” means any entity that offers target housing for lease, rent, or sublease.

7. The LBP Disclosure Rule regulations set forth at 40 C.F.R. Part 745, Subpart F, require that the lessors of target housing must take the following actions, among others, prior to lessees becoming obligated to lease target housing:

- a. Provide to lessees an EPA-approved lead hazard information pamphlet;
 - b. Disclose to lessees the presence of any known LBP and/or LBP hazards in the target housing being leased;
 - c. Include, either within or as an attachment to the lease contract, a Lead Warning Statement; and
 - d. Provide lessees with any records or reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased.
8. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule is a violation of Section 409 of TSCA.
9. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of Section 409 of TSCA shall be liable to the United States for a civil penalty.
10. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provides that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred on or after January 13, 2009, are subject to penalties up to \$16,000 per violation, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. § 19.4. See also 73 Fed. Reg. 75340 (Dec. 11, 2008).

IV. GENERAL ALLEGATIONS

11. Respondent is a limited liability company formed under the laws of the State of Rhode Island.

12. Respondent owns residential buildings in Coventry, Rhode Island and West Warwick, Rhode Island containing a total of nine target housing units.

13. At the time of the violations alleged in this Complaint, Respondent managed and offered for lease residential apartments in two of the buildings referenced in Paragraph 12 including the following properties:

- a. 448 Washington St., Unit B, Coventry, Rhode Island 02816, hereinafter referred to as “448 Washington St. Unit B”;
- b. 450 Washington St., Unit C, Coventry, Rhode Island 02816, hereinafter referred to as “450 Washington St. Unit C”.

14. Pursuant to 40 C.F.R. § 745.103, Respondent is the “lessor” of the two properties listed on Washington St., Coventry, Rhode Island referenced in Paragraph 13.

15. Both properties listed in Paragraph 13 were constructed prior to 1978, and are, therefore, “target housing” as defined in 40 C.F.R. § 745.103.

16. Respondent offered for lease the following units of residential housing to lessees on the dates set forth below:

- a. 448 Washington St. Unit B — Lessees signed the lease on April 1, 2014, and the lease term commenced on April 1, 2014; and
- b. 450 Washington St. Unit C — A lessee signed the lease on or about October 1, 2015, and the lease term commenced on October 1, 2015.

17. On November 25, 2014, EPA received a complaint from a lessee of Respondent's property located at 448 Washington St., Apt. B, West Warwick, Rhode Island 02816. The lessee reported that she had a one-year old child that had been found to have an elevated blood lead level. The lessee reported that Respondent had not given lessee a form disclosing the presence of known LBP or LBP hazards known as a disclosure form ("DF") or the EPA-approved lead hazard information pamphlet as required by the Disclosure Rule.

18. By correspondence dated December 3, 2014 and December 29, 2014, EPA provided compliance assistance to Respondent, including Respondent's principal, Michael Drummond, and Respondent's property manager, Valerie Furtado.

19. On February 9, 2016, EPA received a second complaint from one of Respondent's lessees. This lessee was renting 450 Washington St., Apt. C, Coventry, RI 02816. The lessee had a one-year old child who, accordingly to the lessee, "tested positive for lead." The lessee reported that Respondent had not given the lessee a form disclosing the presence of known LBP or LBP hazards known as a DF or the EPA-approved lead hazard information pamphlet as required by the Disclosure Rule.

20. On the following dates, EPA attempted to reach Respondent by telephone to discuss the lessee's complaint, leaving messages that were not returned: February 11, 2016; February 12, 2016 (twice); and February 17, 2016.

21. On the following dates, EPA attempted to reach Respondent's property manager by telephone, to discuss the lessee's complaint, leaving messages that were not returned:

February 12, 2016

February 17, 2016

22. On February 19, 2016, EPA issued an Information Request Letter (“IRL”) to Respondent seeking information regarding Respondent’s leasing practices with respect to the Disclosure Rule and requesting copies of leases, DFs and any reports and/or letters regarding LBP inspections, risk assessments, abatement orders and any other information relating to the LBP at Respondent’s rental properties.

23. By letter dated March 1, 2016, Respondent sent an incomplete response to the IRL. Included in the partial response was a copy of a DF sent to the lessee on December 1, 2015 (two months after the date of the lease) and unsigned by the lessee.

24. By letter dated March 4, 2016, EPA advised Respondent that the response was incomplete and again requested the outstanding information and documents.

25. On March 15, 2016, EPA received another incomplete response from the Respondent including a partially completed IRL and another copy of the same DF unsigned by the lessee. The response contained none of the requested documents other than the previously submitted DF unsigned by the lessee.

26. By letter dated March 18, 2016, EPA again advised Respondent that the IRL response was incomplete.

27. The March 18, 2016 letter from EPA to Respondent was returned to EPA as unclaimed.

28. On April 29, 2016, EPA issued a Notice of Noncompliance for Potential Violations of the Lead Disclosure Rule (“NON”). The NON stated that the “primary purpose of the letter was to identify problem areas and seek improved compliance.” The NON requested that Respondent, within 30 days of receipt, sign an enclosed Affidavit Certifying Compliance and submit such affidavit to EPA together with additional lease-related information.

29. By letter dated May 3, 2016, Respondent submitted the affidavit certifying compliance with the Disclosure Rule. A letter from the Respondent accompanied the affidavit and stated that “the apartment will be vacated on June 1, 2016 at which time I will be making repairs and renovations.” The response was incomplete in that the Respondent provided none of the documents that had been requested through the NON.

30. On May 11, 2016, EPA left a voice message for Respondent regarding the matter. Respondent did not return the call.

31. By letter dated June 2, 2016, EPA advised Respondent that EPA was in receipt of the affidavit but not of the requested documents. The letter urged Respondent to take immediate steps to submit the requested documents.

32. By e-mail to EPA dated June 28, 2016, on behalf of the Respondent, Attorney Robert A. D’Alfonso requested an extension of time to respond to the NON. The request was granted.

33. By letter dated July 29, 2016 from Attorney D’Alfonso, Respondent submitted the remainder of the outstanding response to the NON.

34. Accompanying the July 29, 2016 letter were copies of seven lease documents and two DFs, both provided late to the lessees and unsigned by the lessees. There were no DFs for the other lessees.

35. Based upon other information and documents obtained from Respondent and EPA’s subsequent investigations, EPA has identified the following violations of the Act and the Disclosure Rule.

V. VIOLATIONS

COUNT I: Failure of Respondent to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet

36. Complainant re-alleges paragraphs 1 through 35.

37. Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under a contract to lease target housing, a lessor must provide lessee with an EPA-approved lead hazard information pamphlet, "Protect your Family from Lead in the Home."

38. Respondent failed to provide the EPA-approved pamphlet to the lessee of 448 Washington St., Unit B, before the lessee was obligated under a contract to lease such target housing.

39. Respondent failed to provide the EPA-approved pamphlet to the lessee of 450 Washington St., Unit C. before the lessee was obligated under a contract to lease such target housing.

40. Accordingly, Respondent's failure to provide the EPA-approved pamphlet to the lessees of target housing described in Paragraphs 38 and 39 before the lessees became contractually obligated to lease said housing constitutes two (2) violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

COUNT II: Failure of Respondent to Include Lead Warning Statement

41. Complainant re-alleges paragraphs 1 through 40.

42. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include a Lead Warning Statement within or as an attachment to the contract.

43. Respondent failed to include a Lead Warning Statement within or as an attachment to the contract with the lessee of 448 Washington St., Unit B before the lessee became obligated to lease said housing under a contract signed on April 1, 2014.

44. Respondent failed to include a Lead Warning Statement within or as an attachment to the contract with the lessee of 450 Washington St., Unit C before the lessee became obligated to lease said housing under a contract signed on October 1, 2015.

45. Respondent's failure to include Lead Warning Statements within or as attachments to the contracts to lease the target housing described in Paragraphs 43 and 44 constitutes two (2) violations of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

**COUNT III: Failure of Respondent to Include a Statement by the Lessor Disclosing
the Presence of Known LBP or Hazards, or Lack of Knowledge Thereof**

46. Complainant re-alleges Paragraphs 1 through 45.

47. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include as an attachment or within the lease contract a statement by the lessor disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating no knowledge of the presence of LBP and/or LBP hazards.

48. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on April 1, 2014 for 448 Washington St., Unit B.

49. Respondent failed to include, as an attachment or within the lease contract a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased,

or indicating the lack of knowledge of the presence of LBP and/or LBP hazards in the lease signed by a lessee on October 1, 2015 for 450 Washington St., Unit C.

50. Respondent's failure to include as attachments or within the lease contracts listed in Paragraphs 48 and 49, above, statements by the lessor disclosing the presence of known LBP and/or LBP hazards in the target housing being leased, or indicating no knowledge of the presence of LBP and/or LBP hazards, constitutes two (2) violations of 40 C.F.R.

§ 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

COUNT IV: Failure of Respondent to Include a List of Any Records Available to the Lessor that Pertain to LBP or Hazards in the Housing, or the Failure to Indicate That No Such Records Exist

51. Complainant re-alleges Paragraphs 1 through 50.

52. Pursuant to 40 C.F.R. § 745.113(b)(3), a contract to lease target housing must include as an attachment or within the contract to lease target housing a list of any records or reports available to the lessor that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist.

53. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on April 1, 2014, for 448 Washington St., Unit B.

54. Respondent failed to include as an attachment or within the lease contract, a list of records or reports that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, in the lease signed by a lessee on October 1, 2015, for 450 Washington St., Unit C.

55. Respondent's failure to include as attachments or within the lease contracts listed in Paragraphs 53 and 54, above, lists of any records or reports available to the lessor that pertain to LBP or LBP hazards in the housing, or an indication that no such records exist, constitutes two (2) violations of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

VI. PROPOSED CIVIL PENALTY

56. Based on the violations described in this Complaint, EPA seeks to assess a total civil penalty of \$81,127.00 against the Respondent. The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. § 745.118(f), as well as the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 and its implementing regulations at 40 C.F.R. Part 19.

57. In determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that Complainant consider the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, the effect of the proposed penalty on their ability to continue in business, any history of prior such violations, their degree of culpability, and such other matters as justice may require.

58. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (the "ERP"), a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

60. Count I: Failure to Provide the EPA-approved Pamphlet.

For two (2) violations of 40 C.F.R. § 745.107(a)(1), EPA proposes a total penalty of \$32,000.00 as follows:

For violation at 448 Washington St., Unit B: \$16,000.00

For violation at 450 Washington St., Unit C: \$16,000.00

61. Count II: Failure to Include Lead Warning Statement.

For two (2) violations of 40 C.F.R. § 745.113(b)(1), EPA proposes a total penalty of \$22,680.00 as follows:

For violation at 448 Washington St., Unit B: \$11,340.00

For violation at 450 Washington St., Unit C: \$11,340.00

62. Count III: Failure to Include a Statement by the Lessor Disclosing the Presence of Known LBP or Hazards, or Lack of Knowledge Thereof.

For two (2) violations of 40 C.F.R. § 745.113(b)(2), EPA proposes a total penalty of \$17,000.00 as follows:

For violation at 448 Washington St., Unit B: \$8,500.00

For violation at 450 Washington St., Unit C: \$8,500.00

63. Count IV: Failure to Include a List of Any Records Available to the Lessor that Pertain to LBP or Hazards in the Housing, or the Failure to Indicate That No Such Records Exist.

For two (2) violations of 40 C.F.R. § 745.113(b)(3), EPA proposes a total penalty of \$5,680.00 as follows:

For violation at 448 Washington St., Unit B: \$2,840.00

For violation at 450 Washington St., Unit C: \$2,840.00

64. Inflation Multiplier: Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. § 19.4, EPA has applied an inflation penalty adjustment multiplier of 1.0487, yielding an increase in the penalty of \$3,767.43 to account for inflation.

VII. QUICK RESOLUTION

65. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's or certified check, payable to "The Treasurer, United States of America." The check should also note the docket number of this Complaint (TSCA-01-2017-0037) and should be forwarded to:

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

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

and

Kathleen E. Woodward
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Mail Code: OES-04-2
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondent need not file an Answer. If Respondent agrees to pay the penalty but need additional time, Respondent may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondent need not file an Answer, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default. See 40 C.F.R. § 22.18(a).

66. Any settlement in this matter shall be made final by the issuance of a written Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

67. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint. **To avoid being found in default, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Kathleen E. Woodward, the attorney assigned to represent EPA in this matter, at:

Kathleen E. Woodward
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912

68. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

IX. INFORMAL SETTLEMENT CONFERENCE

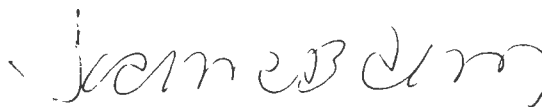
69. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is encouraged to contact Kathleen E. Woodward, Senior Enforcement Counsel, at (617) 918-1780, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted to avoid default.

Kathleen E. Woodward, Senior Enforcement Counsel, at the above address and telephone, has been designated to represent Complainant and is authorized to receive service of process in this action.

2/28/17

Date



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
)	
5 MF Holding, L.L.C.)	Docket No. TSCA-01-2017-0037
110 Byfield St.)	
Warwick, RI 02888)	
)	
Respondent)	Certificate of Service
)	
)	

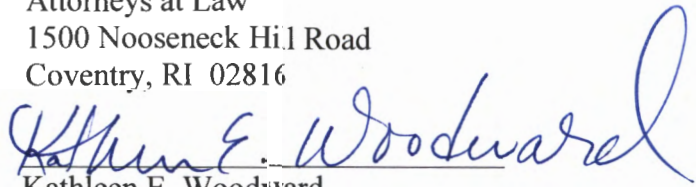
I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region I 5 Post Office Square, Suite 100 (ORA18-1) Boston, MA 02109-3912
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Copy, including 40 C.F.R. Part 22 and Disclosure Rule Penalty Enforcement Response And Penalty Policy (Certified Mail, Return Receipt Requested):	Michael Drummond, Member 5 MF Holding, L.L.C 749 Main St. West Warwick, RI 02893
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Robert A. D'Alfonso, III, Esq.
Inman & Tourgee
Attorneys at Law
1500 Nooseneck Hill Road
Coventry, RI 02816

Dated: March 3, 2017



Kathleen E. Woodward
Senior Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912