

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

\_\_\_\_\_) )  
In the Matter of: ) Docket No. TSCA-05-2011-0021  
) )  
Patrick Wilber; ) Honorable M. Lisa Buschmann  
YaYa Milwaukee, LLC; and ) Presiding Administrative Law Judge  
Sancho Properties, LLC )  
Milwaukee, Wisconsin )  
) )  
Respondents. ) **INCLUDES EXHIBITS CLAIMED AS**  
) **CONFIDENTIAL BUSINESS INFORMATION**  
\_\_\_\_\_) **AND PERSONAL PRIVACY INFORMATION**

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**COMPLAINANT’S INITIAL PREHEARING EXCHANGE**

The United States Environmental Protection Agency, Region 5 (“U.S. EPA” or “Complainant”), in accordance with the March 15, 2012, Prehearing Order (Prehearing Order) issued by Presiding Officer, M. Lisa Buschmann, respectfully submits the following *Complainant’s Initial Prehearing Exchange* pursuant to Section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. § 22.19.

**I. EXPECTED WITNESSES**

This section includes the names of witnesses Complainant intends to call, together with a brief narrative summary of each witnesses’ expected testimony as required by Paragraph I.A of the Prehearing Order.

**A. Fact Witnesses**

Complainant may call the following individuals to testify as fact witnesses:

1. Leslie Blake: Leslie Blake is an Environmental Engineer with the Land and Chemicals Division,<sup>1</sup> U.S. EPA, Region 5. Ms. Blake's duties include serving as an enforcement officer and a case developer in the investigation of lead disclosure violations under the Toxic Substances Control Act (TSCA). She also maintains the official enforcement records for investigations that she is assigned, including but not limited to, records related to investigation of compliance with TSCA by Mr. Patrick Wilber and associated companies. Ms. Blake will testify regarding her review of the documents contained in the official enforcement file for the Wilber case (Wilber case file). Those documents include, but are not limited to, lease agreements, disclosure statements, information requests and inspection reports related to compliance with Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and its implementing regulations, particularly 40 C.F.R. Part 745, Subpart F (Lead Disclosure Rule).

Ms. Blake will provide the Court with testimony on the Lead Disclosure program and the critical importance of timely, accurate and full disclosure to protecting human health. She may testify as to her knowledge of the effects of lead on children and other sensitive populations. She will testify as to her review of the evidence compiled as a result of Complainant's regulatory oversight of Respondents' rental businesses, and the factual basis for her determination that Respondents violated TSCA and the Lead Disclosure Rule as alleged in the Complaint.

Ms. Blake will also testify as to how she calculated the penalty proposed by applying the statutory penalty factors set forth within Section 16(a)(2)(B) of TSCA, 15 U.S.C.

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<sup>1</sup> The Land and Chemicals Division was formerly known as the Waste, Pesticides and Toxics Division. The Chemicals Management Branch was formerly known as the Pesticides and Toxics Branch, and the Pesticides/Toxics Compliance Section was formerly known as the Pesticides and Toxics Enforcement Section.

§ 2615(a)(2)(B), as explained by U.S. EPA's Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007, and as set forth in greater detail in Complainant's Exhibit 31 (CX 31). She will offer her assessment of the appropriateness of the penalty proposed in the Complaint, considering the nature, circumstances, extent, and gravity of the violations, and with respect to the facts she was aware of related to Respondents' ability to pay,<sup>2</sup> effect of ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

Ms. Blake will testify regarding the delegation of authority pertaining to the Complaint. She will testify as to the factual allegations contained in the Complaint which establish Respondents' liability for the violations alleged in the Complaint. If necessary, Ms. Blake may authenticate certain exhibits included in this prehearing exchange or subsequent prehearing exchanges. Ms. Blake may testify, as necessary, to respond to assertions raised by the Respondents.

2. Maureen O'Neill. Ms. O'Neill is a Civil Investigator in the Office of Regional Counsel, U.S. EPA, Region 5. Ms. O'Neill performs investigative work in support of the civil prosecution of environmental violations. Ms. O'Neill's duties include interviewing potential witnesses and other individuals who may have pertinent information; locating people of interest; performing public records searches to obtain evidence relating to property ownership, asset transfers, and other financial information; and drafting reports to document the findings of her investigations. Ms. O'Neill may be called to testify regarding her investigation into Respondents. Ms. O'Neill's testimony may include, but may not be limited to, testimony about

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<sup>2</sup> Complainant reserves the right to identify a financial expert in its Rebuttal Prehearing Exchange if the Respondents raise ability to pay as a defense in their Prehearing Exchange.

the following investigative activities: internet investigations into ownership of real property, personal property and other assets associated with Respondents; investigations into the estimated current fair market value of real property, personal property and other assets associated with Respondents; investigation into the disposition of real property, personal property, and other assets associated with Respondents; investigation of liens and other liabilities relating to Respondents; investigation of Respondents' associations with other corporate, partnership or other business entities; and investigations of the background of potential witnesses. If necessary, Ms. O'Neill will provide testimony sufficient to authenticate the documents and other exhibits that she relied upon to conduct her investigations. Ms. O'Neill may also testify, as necessary, to respond to assertions or arguments raised by Respondents.

**B. Expert Witnesses**

Complainant may call as witnesses experts who can testify on the impact of lead poisoning on children from lead-based paint and the importance of the Lead Disclosure rule in preventing children from becoming lead-poisoned. Due to funding issues the Complainant is not able to provide the name of such a witness at this time but reserves the right to timely supplement this Prehearing Exchange with the name and curriculum vitae.

**II. DOCUMENTS AND EXHIBITS**

Copies of documents and exhibits which Complainant intends to introduce into evidence at the hearing are attached hereto as Complainant's Exhibits, and are numbered sequentially. An index to those documents is attached. Complainant has included documents that the Court ordered to be exchanged in Paragraphs I.A.2, B.1 and B.3 of the Prehearing Order.

Complainant reserves the right to add additional exhibits to rebut Respondents'

testimony.

### **III. DETERMINATION OF THE PROPOSED PENALTY AMOUNT**

In this matter, Leslie Blake made the penalty determinations for Complainant. A narrative of how the penalty was calculated and the facts considered is included as CX 31.

### **IV. APPLICATION OF THE PAPERWORK REDUCTION ACT**

As stated in Paragraph I.B.4 of the Prehearing Order, the Presiding Officer directed Complainant to provide its position regarding the applicability of the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 et seq., to this proceeding, including whether there is a current Office of Management and Budget (OMB) control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.

The PRA does apply to the information collection requirements of the lead-paint disclosure rule at 40 C.F.R. Part 745, Subpart F. U.S. EPA obtained OMB approval of the information collection requirements and the OMB control number assigned to the information collection requirements in the rule is 2070-0151. According to the preamble to the final rule, the rule contains the following information collection requirements: (1) disclosure of known lead-based paint and/or lead-based paint hazards; (2) provision of any available records and reports pertaining to lead-based paint in the housing; (3) provision of a federally-approved lead hazard information pamphlet; (4) completion and subsequent retention of disclosure and acknowledgment for 3 years; and (5) provision of a 10-day evaluation opportunity to purchasers before obligation under purchase contracts. See 61 Fed. Reg. 9081, March 6, 1996.

On May 31, 1996, U.S. EPA issued a notice in the Federal Register (61 Fed. Reg. 27348) to announce that on April 22, 1996, OMB had approved the information collection requirements

contained in 40 C.F.R. §§ 745.107, 745.110, 745.113, and 745.115. This notice stated that OMB control number 2070-0151 had been assigned to these collection activities, and was valid through April 30, 1999. On July 1, 1996 (61 Fed. Reg. 33851), U.S. EPA amended the table in 40 C.F.R. Part 9 to add this OMB control number to the listing of OMB control numbers for U.S. EPA's regulations that appear in Section 9.1. See 64 Fed. Reg. 39418 (July 22, 1999). The control number was renewed on September 28, 2001 (66 Fed. Reg. 49664), November 30, 2004 (69 Fed. Reg. 69598-69599) and on April 4, 2008 (73 Fed. Reg. 20037) authorizing collection of information through March 30, 2011.<sup>3</sup>

The transactions alleged in the Complaint occurred from November 1, 2006 through May 12, 2008. There were no lapses in this OMB control number during the period of noncompliance cited in the Complaint. Thus, Complainant has fully complied with the PRA with respect to the counts at issue in this proceeding.

#### **V. LOCATION AND LENGTH OF HEARING**

As required by Paragraph I.A.3 of the Prehearing Order, Complainant requests that the hearing in this matter be held at a suitable location in or near Milwaukee, Wisconsin. This is where Respondent, Patrick Wilber, resides and conducts the business which the hearing concerns.

Complainant anticipates needing approximately 1 to 2 days to present its direct case. No translation services are needed for the Complainant or its witnesses.

#### **VI. JUDICIAL NOTICE**

Complainant hereby requests the Presiding Officer to take judicial notice of the

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<sup>3</sup> On March 2, 2011, EPA submitted to OMB EPA ICR No. 1710.06 (OMB Control Number 2070-0151) for review and approval, (76 Fed. Reg. 11451). Under OMB rules the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

following:

1. The Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and the regulations promulgated thereunder;
2. The Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-56, including the legislative history, and the regulations promulgated thereunder;
3. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, as amended, including 61 Fed. Reg. 9064, March 6, 1996; and
4. Federal Register notices pertaining to OMB information collection requirements.

#### **VII. RESERVATION OF RIGHTS**

Complainant respectfully reserves the right to call all witnesses called by the Respondents, to call the Respondent, Patrick Wilber, to recall any of Respondents' witnesses in rebuttal, and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondents and the Presiding Officer.

Respectfully submitted,

 4/19/12

Richard J. Clarizio  
Associate Regional Counsel  
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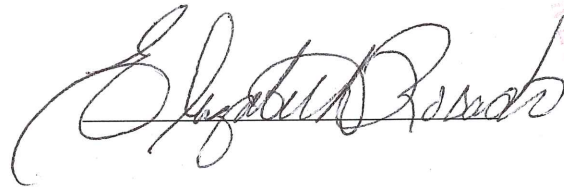
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PROTECTION AGENCY**

In the Matter of Patrick Wilber, YaYa Milwaukee, LLC and Sancho Properties, LLC Docket No. TSCA-05-2011-0021

CERTIFICATE OF SERVICE

I hereby certify that today I filed the *Complainant's Initial Prehearing Exchange* in the manner indicated below.

4/20/12  
Date



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LaDawn Whitehead  
Regional Hearing Clerk  
U.S. EPA, Region 5, E-19J  
77 W. Jackson, 13<sup>th</sup> Floor  
Chicago, Illinois 60604-3590

By UPS

The Honorable Lisa M. Buschmann  
Office of Administrative Law Judges  
U.S. EPA  
Mail Code 1099 14<sup>th</sup> Street, N.W. Suite 350  
Washington D.C. 20005

Patrick Wilber  
3201 North Holton Street  
Milwaukee, Wisconsin 53212



Confidential Business Information (CBI)	CX Number	Date	Title	Bates Number
	1	Various Dates	Rental Agreements for properties identified in the Complaint.	CX-000001 - CX-000041
	2	Various Dates	Tenant Lease Agreements for Section 8 Housing.	CX-000042 - CX-000049
	3	Undated	City of Milwaukee Neighborhood Services System - Property List - Patrick Willber.	CX-000050 - CX-000122
	4	Undated	Wisconsin Real Estate Broker information including credential summary for Patrick Willber; Real Estate Broker Licensing requirements and regulations.	CX-000123 - CX-000135
	5	Various Dates	Dunn & Bradstreet Reports various companies and names.	CX-000136 - CX-000161
	6	9/10/1980	Guidelines for the Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy (45 Fed. Reg. 59770).	CX-000162 - CX-000170
	7	3/19/1996	EPA & HUD Fact Sheet - Disclosure of Lead-Based Paint Hazards in Housing. Interpretive Guidance for the Real Estate Community on the Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing, USEPA, Office of Pollution Prevention and Toxics.	CX-000171 - CX-000173
	8	8/20/1996	Letter from M.T. Whattker, A1 Accounting & Income Tax, LLC to Patrick Willbur, re: 2006 Federal and State Income tax returns with attached returns.	CX-000174 - CX-000187
	9	10/16/2007	2006 Federal Income tax return (unsigned & undated). 2006 Wisconsin Income tax return (unsigned & undated). Attachment	CX-000188 - CX-000296
	10	12/1/2007	Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy.	CX-000297 - CX-000332
	11	5/13/2008	Notes of 5/13/2008 inspection.	CX-000333 - CX-000335

12	10/27/2008	Memo from Edward R. Pliny to File re: Milwaukee Order to Correct Condition of Premises located at 12/12/2007 for 1101 S. 19th with Order, receipt and notes.	CX-000336 - CX-000342
13	10/29/2008	<p>Inspection Report - Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1982 - May 13, 2008, inspection signed Edward R. Pliney.</p> <p>Attachment A 5/13/2008 Lead Paint - Notice of Inspection - signed Edward R. Pliney and Patrick Wilber.</p> <p>Attachment B 5/13/2008 Confidentiality Notice - signed Patrick Wilber.</p> <p>Attachment C 12/12/2007 City of Milwaukee Health Department - Order to Correct Condition of Premises - 1101 S. 19th Street.</p> <p>Attachment D 4/23/2008 Letter from Edward R. Pliny, Multi-Program Inspector to Patrick Wilbur re: Inspection for compliance with Section 1018 with certified return receipt card.</p> <p>Attachment E 7/3/2008 Letter from USEPA to Patrick Wilbur re: Request for Information with attachments.</p> <p>Attachment E 7/18/2008 Letter from Patrick Wilber re: Response to Requested Information.</p> <p>Attachment E 7/22/2008 Affidavit Responding to the Information Request Letter signed by Patrick Wilbur.</p> <p>Attachment F 5/13/2008 Receipt for Documents signed by Edward R. Pliney and Patrick A. Wilber.</p>	CX-000343 - CX-000371
14	4/1/2011	American Healthy Homes Survey - Lead and Arsenic Findings - U.S. Department of Housing and Urban Development.	CX-000372 - CX-000486
15	5/18/2011	Letter from Mardi Klevs, Chief, Chemicals Management Branch (CMB) to Patrick Wilber, re: Notice of Intent to File Administrative Complaint (PFN) without enclosure. Signed Certified Mail Receipt attached.	CX-000487 - CX-000492
16	6/7/2011 received	Letter from Patrick Wilber to Julie Morris, USEPA re: PFN.	CX-000493 - CX-000495

17		6/24/2011	Letter from Patrick Wilber to Scott Cooper, Pesticides and Toxics Compliance Sec. (PTCS) re: Disclosure Statement 1101 S. 19th with enclosed Disclosure Statements (2 pages).	CX-000496 - CX-000500
18		7/15/2011	Letter from Patrick Wilber to Julie Morris, PTCS re: Requested property/tenant information with enclosed Disclosure Statements (35 pages), copy of 7/3/08 USEPA request for information, and certified mail receipt. E-mail chain between Pooja Dhaliwal, Section 8 Assistant Program Director, City of Milwaukee Housing Authority to Leslie Blake, USEPA re: Lead Disclosure forms for three properties.	CX-000501 - CX-000541
19		8/3/2011	Disclosure forms for three properties.	CX-000542 - CX-000546
20	CBI	8/22/2011	Letter from Patrick Wilber to Julie Morris, PTCS re: Tax returns 2007-2009 and 2010 tax extension with attached tax returns.	CX-000547 - CX-000719
	CBI		Attachment 2009 unsigned Federal Tax Return Patrick Wilber and Sancho Properties (dated 4-14-2010).	
	CBI		Attachment 2009 Wisconsin Tax Return Patrick Wilber (unsigned and undated).	
	CBI		Attachment 2008 unsigned Federal Tax Return Patrick Wilber and Sancho Properties (undated).	
	CBI		Attachment 2008 Wisconsin Tax Return Patrick Wilber - (unsigned and undated).	
	CBI		Attachment 2007 unsigned Federal Tax Return Patrick Wilber and YaYa Milwaukee, LLC (undated).	
	CBI		Attachment 2007 unsigned Wisconsin Tax Return Patrick Wilber (undated).	
	CBI		Attachment Letter from Leslie Blake, USEPA, PTCS, to Patrick Wilber re: Ability to Pay Information with 2 enclosures.	
21		8/31/2011	Letter from Leslie Blake, PTCS to Patrick Wilber re: Ability to Pay Information with enclosures.	CX-000720 - CX-000735
22		9/16/2011	Wisconsin Department of Financial Institutions - Corporate Certifications for 4-Sale/Just Sold Realty Inc., Sancho Properties, LLC, YaYa Milwaukee, LLC.	CX-000735 - CX-000749

23	9/26/2011	Letter from Margaret M. Guerriero, Director, Land and Chemicals Division (LCD) to YaYa Milwaukee, LLC re: In the Matter of Patrick Wilbur, Docket No.: TSCA-05-2011-0021, with attached complaint, certificate of service and postal service return mail stamp.	CX-000750 - CX-000789
24	10/11/2011	Letter from Richard J. Clarizio, Associate Regional Counsel to Patrick Wilber, YaYa Milwaukee, LLC and Sancho Properties, LLC re: In the Matter of Patrick Wilber, Docket No.: TSCA-05-2011-0021 with attached complaint, certificate of service, UPS shipping label and UPS confirmation tracking detail.	CX-000790 - CX-000832
25	10/25/2011	Letter from Patrick Wilber to Margaret guerriero (sic) re: TSCA-05-2011-0021 request for hearing with attachments.	CX-000833 - CX-000838
26	11/2/2011	Order and Notice of Exclusion. Answer in TSCA-05-2011-0021 with certificate of service and mailing label.	CX-000839 - CX-000842
27	11/17/2011	Answer in TSCA-05-2011-0021 with certificate of service and mailing label.	CX-000843 - CX-000847
28	4/11/2012	E-mail chain between Roemary Binder, City of Milwaukee and Leslie Blake, USEPA re: Lead Orders for Wilber properties.	CX-000848 - CX-000849
29	Undated	Manta Company Profile - Sancho Properties.	CX-000850 - CX-000852
30	Various Dates	Headquarters and Region 5 Delegations 12-1 and 12-2A.	CX-000853 - CX-000859
31	Undated	Penalty Narrative and Matrix.	CX-000860 - CX-000880
32	Various Dates	City of Milwaukee Neighborhood Services System - Property List - Patrick Wilber.	CX-000881 - CX-000907