

DUFFIN & HASH, LLP

Attorneys at Law

Ryan G. Duffin, P.C.
Robert W. Hash, P.C.
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Lori A. Coates
Celina M. Tomori

Barbara Besore Denton
Mitchell E. Pippin, P.C.
Of Counsel

January 16, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Regional Hearing Clerk (E-13J)
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

RE: In the Matter of Edward L. Murray, Jr.
U.S. Environmental Protection Agency
Case No. TSCA-05-2007-0013

Dear Clerk:

Please find enclosed an original and one copy of an Appearance and Respondent's Answer and Affirmative Defenses to Complaint for filing with the Court.

Please return a file-marked copy to me in the envelope provided. Your assistance and cooperation is appreciated.

Sincerely,



Robert W. Hash
e-mail: rwhash@duffinandhash.com

RWH/asm
Enclosures

Certified Mail Receipt No. 7006 2760 0003 7614 2023

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2008 JAN 18 PM 4:54

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

| | | |
|------------------------|---|--------------------------------------|
| In the Matter of: |) | Docket No. TSCA-05-2007-0013 |
| |) | |
| Edward L. Murray, Jr. |) | Proceeding to Assess a Civil Penalty |
| Indianapolis, Indiana, |) | Under Section 16(a) of the Toxic |
| |) | Substance Control Act |
| Respondent. |) | |
| |) | |

APPEARANCE FORM
Responding Party

Case Number: TSCA-05-2007-0013

- Edward L. Murray, Jr.
Name or names of responding party or parties
- Attorney Information (as applicable for service of process):

| | |
|--|------------------------------|
| Name: <u>Robert W. Hash</u> | Atty. No.: <u>16422-49</u> |
| Address: <u>9200 Keystone Crossing, Ste. 420</u> | Phone: <u>(317) 580-9348</u> |
| <u>Indianapolis, Indiana 46240</u> | Fax: <u>(317) 580-9427</u> |
- Will responding party accept FAX service: Yes
- Additional information required by state or local rule: N/A

DUFFIN & HASH, LLP



Robert W. Hash
Attorney No.: 16422-49

DUFFIN & HASH, LLP
9200 Keystone Crossing
Suite 420
Indianapolis, IN 46240
(317) 580-9348
Attorney for Respondent,
Edward L. Murray, Jr.

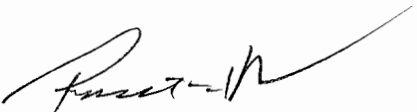
CERTIFICATE OF SERVICE

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US EPA REGION V

I hereby certify that a copy of the foregoing was served upon the following by First Class, United States Mail, postage prepaid, this 10th day of January, 2008. JAN 13 PM 4: 51

Ms. Elizabeth Lytle
Pesticides and Toxics
Compliance Section
U.S. EPA – Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Ms. Cynthia A. King
Associated Regional Counsel
U.S. EPA – Region 5
77 W. Jackson Boulevard
Chicago, IL 60604



Robert W. Hash

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Edward L. Murray, Jr.)
Indianapolis, Indiana,)
)
Respondent.)
_____)

Docket No. TSCA-05-2007-0013
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic
Substance Control Act

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RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Comes now Respondent, Edward L. Murray, Jr., by counsel, and hereby responds to the Complaint, as follows:

1. Respondent is without sufficient knowledge to form a belief as to the truth of the material allegations of paragraph 1 of the Complaint.
2. Respondent is without sufficient knowledge to form a belief as to the truth of the material allegations of paragraph 2 of the Complaint.
3. Respondent denies the allegations contained in paragraph 3 of the Complaint.

WHEREFORE, Respondent, Edward L. Murray, Jr., by counsel, prays that Petitioner take nothing by way of its Complaint, that Respondent be awarded judgment for his costs herein, and all other relief just and proper in the premises.

Statutory and Regulatory Background

Paragraphs 4 through 13 of the Complaint make no allegations against Respondent and therefore, no response is required. To the extent a response is deemed appropriate, Respondent is without sufficient knowledge to form a belief as to the truth of the material allegations of paragraphs 4 through 13 of the Complaint.

General Allegations

14. Respondent admits that he owned the properties listed in the Complaint.

15. Respondent admits that he owned more than four residential property. However, Respondent is without sufficient knowledge to form a belief as to the truth of the material allegations of paragraph 15 of the General Allegations of the Complaint.

16. Respondent admits that each of the specified properties was constructed prior to 1978.

17. Respondent is without sufficient knowledge to form a belief as to the truth of the material allegations of paragraph 17 through 29 of the Complaint.

WHEREFORE, Respondent, Edward L. Murray, Jr., by counsel, prays that Petitioner take nothing by way of its Complaint, that Respondent be awarded judgment for his costs herein, and all other relief just and proper in the premises.

Violations

30. Respondent hereby incorporates his responses to paragraphs 1 through 29 of the Complaint as if fully set out herein.

31. Respondent admits that a requirement exists under specified circumstances and subject to several exceptions and exclusions.

32. Respondent denies the allegations contained in paragraph 32 through 42 of the Complaint.

WHEREFORE, Respondent, Edward L. Murray, Jr., by counsel, prays that Petitioner take nothing by way of its Complaint, that Respondent be awarded judgment for his costs herein, and all other relief just and proper in the premises.

Failure to Include a List of Records in Rental Contracts

43. Respondent hereby incorporates his responses to paragraphs 1 through 29 of the Complaint as if fully set out herein.

44. Respondent admits that a requirement exists under specified circumstances and subject to several exceptions and exclusions.

45. Respondent denies the allegations contained in paragraph 45 through 55 of the Complaint.

WHEREFORE, Respondent, Edward L. Murray, Jr., by counsel, prays that Petitioner take nothing by way of its Complaint, that Respondent be awarded judgment for his costs herein, and all other relief just and proper in the premises.

Failure to Include Statement of Receipt and Lead Hazard
Information Pamphlet in Rental Contracts

56. Respondent hereby incorporates his responses to paragraphs 1 through 29 of the Complaint as if fully set out herein.

57. Respondent admits that a requirement exists under specified circumstances and subject to several exceptions and exclusions.

58. Respondent denies the allegations contained in paragraph 58 through 68 of the Complaint.

WHEREFORE, Respondent, Edward L. Murray, Jr., by counsel, prays that Petitioner take nothing by way of its Complaint, that Respondent be awarded judgment for his costs herein, and all other relief just and proper in the premises.

Failure to Include Certifying Signatures in Rental Contracts

69. Respondent hereby incorporates his responses to paragraphs 1 through 29 of the Complaint as if fully set out herein.

70. Respondent admits that a requirement exists under specified circumstances and subject to several exceptions and exclusions.

71. Respondent denies the allegations contained in paragraph 71 through 81 of the Complaint.

WHEREFORE, Respondent, Edward L. Murray, Jr., by counsel, prays that Petitioner take nothing by way of its Complaint, that Respondent be awarded judgment for his costs herein, and all other relief just and proper in the premises.

Proposed Civil Penalty

Respondent denies that he has violated the cited requirements and that the requirements applied to the subject properties during the stated times, and thus, denies that any penalty is appropriate. Respondent further denies that the stated penalties are appropriate or in compliance with the applicable statutes, rules, and regulations.

Rules Governing This Proceeding

Respondent is without sufficient knowledge to form a belief as to the truth of the material allegations of the Rules Governing This Proceeding.

Filing and Service of Documents

Respondent acknowledges that this Answer will be filed with the Regional Hearing Clerk and will be sent to Cynthia A. King.

Penalty Payments

Respondent makes no response to this portion of the Complaint.

Opportunity to Request a Hearing

Respondent hereby requests a hearing as to all issues including but not limited to any dispute regarding the material facts asserted in this Complaint and to contest the appropriateness of a penalty as well as the amount of any imposed penalty.

Settlement Conference

Respondent hereby requests an informal settlement conference.

Continuing Obligations to Comply

Respondent makes no response to this portion of the Complaint.

WHEREFORE, Respondent, Edward L. Murray, Jr., by counsel, prays that Petitioner take nothing by way of its Complaint, that Respondent be awarded judgment for his costs herein, and all other relief just and proper in the premises.

AFFIRMATIVE DEFENSES

Comes now Respondent, Edward L. Murray, Jr., by counsel, and for his Affirmative Defenses to the Complaint, states as follows:

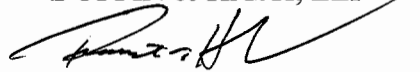
1. Respondent denies that he violated the identified sections of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and regulations in that all required notices and disclosures were provided in accordance with the statutory and regulatory requirements.
2. Respondent contends that the required certification was completed in accordance with the applicable statutes and regulations.
3. Portions of the alleged violations cannot be asserted as the recordkeeping requirements under the Act and applicable regulations had expired, and therefore, Respondent was not required to retain or produce any supporting documentation.

4. The amount of the proposed penalties is inappropriate as the enumerated factors were not properly considered and applied.

5. Respondent contends that no violations occurred as the identified properties had been inspected by governmental inspectors and found to comply with all applicable housing standards for inclusion in the Section 8 program and appropriate Section 8 certificates were issued as to each identified property.

6. Respondent reserves the right to supplement these defenses as additional information and documentation is located and/or obtained.

DUFFIN & HASH, LLP



Robert W. Hash

Attorney No.: 16422-49

DUFFIN & HASH, LLP
9200 Keystone Crossing
Suite 420
Indianapolis, IN 46240
(317) 580-9348
Attorney for Respondent,
Edward L. Murray, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by First Class, United States Mail, postage prepaid, this 16th day of January, 2008.

Ms. Elizabeth Lytle
Pesticides and Toxics
Compliance Section
U.S. EPA – Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Ms. Cynthia A. King
Associated Regional Counsel
U.S. EPA – Region 5
77 W. Jackson Boulevard
Chicago, IL 60604



Robert W. Hash

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