

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
JAN 22 2009

Mardaph II, LLC; Mardaph III, LLC;
and Vinnie Wilson;
Cincinnati, Ohio
Respondents.

Docket No. TSCA-05-2008-0019

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

MOTION FOR DEFAULT

Complainant United States Environmental Protection Agency (U.S. EPA) herein files this Motion for Default Judgment against Respondent Vinnie Wilson and in support thereof states as follows:

1. On July 31, 2008, U.S. EPA filed an administrative complaint (Complaint) against the Respondents alleging 47 violations of the Toxic Substances Control Act (TSCA).
2. In the complaint, U.S. EPA sought a penalty against Respondent Vinnie Wilson of \$91,090.
3. Respondent Vinnie Wilson was personally served with the Complaint, along with a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, and the Section 1018 Disclosure Rule Enforcement Response Policy, on October 22, 2008.
4. Despite being personally served with the complaint, Respondent Vinnie Wilson has failed to file an answer within 30 days of service as required by 40 C.F.R. § 22.15(a).
5. Pursuant to 40 C.F.R. § 22.17, U.S. EPA hereby moves for the entry of an order of default against Respondent Vinnie Wilson in the amount of \$91,090.

6. In support of its motion, U.S. EPA hereby files the attached Brief in Support of Motion for Entry of a Default Order.

Wherefore, U.S. EPA respectfully requests that the Regional Hearing Official enter an order for default against Respondent Vinnie Wilson.

Submitted this 22nd day of January 2009.



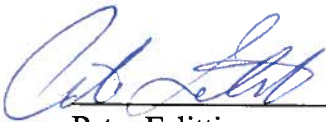
Peter Felitti
Assistant Regional Counsel
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing was served on the Regional Hearing Clerk, U.S. EPA Region 5, and that true and correct copies were served on the Regional Hearing Officer and Respondent Vinnie Wilson Steel with delivery by first class mail on January 22, 2009 to:

Vinnie Wilson
7923 Rambler Place
Cincinnati, Ohio 45231

Dated this 22nd day of January 2009.



Peter Felitti
Assistant Regional Counsel
U.S. EPA, Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
)

Mardaph II, LLC; Mardaph III, LLC;)
and Vinnie Wilson;)
Cincinnati, Ohio)
Respondents.)

Docket No. TSCA-05-2008-0019

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BRIEF IN SUPPORT OF MOTION FOR DEFAULT

Complainant United States Environmental Protection Agency (U.S. EPA) herein files this brief in support of its motion for a Default Judgment against Respondent Vinnie Wilson.

Summary

On July 31, 2008, U.S. EPA filed an administrative complaint against the Respondents, including Respondent Vinnie Wilson, alleging 47 violations of the Toxic Substances Control Act (TSCA). The complaint alleged, inter alia, that Respondent Vinnie Wilson as the owner and/or agent for the owner of rental units failed to provide its lessees with the required disclosures regarding the possible presence of lead paint. U.S. EPA sought a penalty against Respondent Vinnie Wilson of \$91,090, which was calculated pursuant to applicable statutory and guidance requirements. Though served with the complaint, Respondent Vinnie Wilson failed to file an answer within 30 days of service. U.S. EPA therefore moves for the entry of a default order against Respondent Vinnie Wilson in the amount of \$91,090.

Statutory and Regulatory Background

In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. §4851 et seq., Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of six. At low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and sales. Section 1018, 42 U.S.C. §4852d requires the Administrator and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

On March 6, 1996, pursuant to 42 U.S.C. §4852d, U.S. EPA and HUD promulgated regulations at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, known as, “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property” (Disclosure Rule). Pursuant to 40 C.F.R. §745.102(b), owners of one to four residential dwellings must comply with the Disclosure Rule by December 6, 1996. The Disclosure Rule implements the provisions of 42 U.S.C. §4852d, which impose certain requirements on the sale or lease of target housing. 40 C.F.R. §745.103 defines “target housing” as any housing constructed prior to 1978, except 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. 40 C.F.R. §745.103 defines “owner” as 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. 40 C.F.R. §745.103 defines “lessor” as 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. 40 C.F.R. §745.103 defines “lessee” as 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. 40 C.F.R. §745.103 defines “agent” as any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

40 C.F.R. §745.100 requires, among other things, that a seller or lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing. 40 C.F.R. §745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement as set forth in the regulations (40 C.F.R. §745.113(b)(1)); a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence (40 C.F.R. §745.113(b)(2)); a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist (40 C.F.R. §745.113(b)(3)); a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required by 15 U.S.C. §2696 (40 C.F.R. §745.113(b)(4));

and signatures and dates of signatures of the lessor, agent, and lessee certifying the accuracy of their statements (40 C.F.R. §745.113(b)(6)). Under 42 U.S.C. §4852d(b)(5) and 40 C.F.R. §745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. §2689, which may subject the violator to administrative civil penalties under Section 16 of TSCA, 15 U.S.C. §2615(a), 40 C.F.R. §745.118(f), and 42 U.S.C. §4852d(b)(5). Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §4852d(b)(5), and 40 C.F.R. §745.118(f), authorize the Administrator of U.S. EPA to assess a civil penalty under Section 16(a) of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. §745.118(f) and 40 C.F.R. Part 19.

Factual Background

The U.S. Department of Housing and Urban Development (HUD) and the U.S. EPA, Region 5, conducted a joint investigation in the Cincinnati, Ohio metropolitan area to determine compliance with the Section 1018 Real Estate Notification and Disclosure Rule. One of the subjects of this investigation was Respondent Vinnie Wilson who is also d/b/a Mardaph, Inc.; Mardaph I, LLC; Mardaph II, LLC and Mardaph III, LLC. In March of 2007, U.S. EPA conducted an inspection of Ms. Wilson's records. See Exhibit 1. However, not all required records were available for review during the inspection. Therefore, U.S. EPA requested that Ms. Wilson submit copies of requested documents via U.S. Mail. See Exhibit 2. U.S. EPA did not receive the information requested or any correspondence from Ms. Wilson.

Based on information obtained from the inspection, the City of Cincinnati Department of Health, HUD and public records, on April 14, 2008, U.S. EPA issued a notice of intent to file

a civil administrative action to Vinnie Wilson, Mardaph II, LLC and Mardaph III, LLC. See Exhibit 3. The letter informed the recipients that U.S. EPA would allege violations of Section 1018, 42 U.S.C. § 4852d, for lease transactions. *Id.* The violations included a failure to provide the lessee (either within the lease contract or as an attachment to the lease contract) a lead warning statement, an accurate lead disclosure statement, a list of any records or reports available to the lessor, and certain required statements affirming compliance with 42 U.S.C. §4852d. *Id.* The proposed gravity –based civil penalty was \$91,090 for these violations. *Id.* The letter encouraged the recipients to contact U.S. EPA. *Id.* The letter for Respondent Vinnie Wilson was sent by certified mail to 7923 Rambler Place, Cincinnati, Ohio and was signed for. *Id.* Respondents Mardaph II, LLC and Mardaph III, LLC, are both corporations authorized to do business in Ohio with an address of 105 East Fourth Street, Cincinnati, Ohio and a registered agent listed as Jeffrey Greenberger. See Exhibit 1-Attachment C. Respondent Wilson is the president of both Mardaph II, LLC and Mardaph III, LLC. *Id.*

On May 7, 2008, Respondent Vinnie Wilson wrote to U.S. EPA, enclosing some documents. See Exhibit 4. However, these documents did not address any of the alleged violations. The returned address for Respondent Wilson was 7923 Rambler Place. *Id.* Despite two letters from U.S. EPA trying to set up a phone conference with Respondent Wilson, U.S. EPA had no further contact with Respondent Wilson. See Exhibits 5, letter dated May 13, 2008 (which was returned to sender) and Exhibit 6, letter dated June 5, 2008.

As a result, on July 31, 2008, U.S. EPA filed an administrative complaint against Vinnie Wilson, Mardaph II, LLC and Mardaph III, LLC. See Exhibit 7. The complaint alleged that: Respondent, Mardaph II, LLC owned residential rental property located at 711 Marion Road and 8750 Venus Drive, Cincinnati, Ohio and Respondent, Mardaph III, LLC owned

residential rental property located at 2605 Fenton Avenue, 2637 Fenton Avenue, 2639 Fenton Avenue, and 3341 McHenry Avenue, Cincinnati, Ohio. *Id.* at ¶¶ 17 & 18. The complaint further alleged that Respondent Vinnie Wilson owned residential rental property located at 1815 Clarion Avenue, 2636 Fenton Avenue, 4537 Lucerne Avenue, and 1530 Kinney Avenue, Cincinnati, Ohio. *Id.* at ¶ 19. The complaint further alleged that Respondent Vinnie Wilson managed all of the above Properties and was the agent of Respondents Mardaph II, LLC and Mardaph III, LLC. *Id.* at ¶ 20. All of the residential rental properties referenced above were constructed prior to 1978 and thus were “target housing” as defined in 40 C.F.R. § 745.103. *Id.* at ¶¶ 21 & 22. The complaint further alleged that each Respondent offered and entered into leases for rental units in apartment buildings or single-family dwellings it owned or managed. *Id.* at ¶¶ 25 to 27 and 29 to 31.

The complaint alleged a total 47 violations of TSCA at ten residential rental units. There were five separate violations of TSCA: a failure to provide a lead warning statement, 40 CFR §745.113(b)(1); a failure to provide a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, 40 CFR §745.113(b)(2); a failure to provide a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, 40 CFR §745.113(b)(3); a failure to provide a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113(b)(2) and (b)(3), and the lead hazard information pamphlet required under 15 U.S.C. §2696, 40 CFR §745.113(b)(4); and a failure to have the signatures of the lessor, agent and the lessee certifying the accuracy of their statements to the best of their knowledge and the dates of such signatures before the lessee is obligated under the contract for the leasing transaction, 40

CFR §745.113(b)(6). The complaint alleged that Respondent Vinnie Wilson committed these violations as the owner of the rental units at 1815 Clarion Avenue, 2636 Fenton Avenue, 4537 Lucerne Avenue, and 1530 Kinney Avenue, Cincinnati, Ohio, *Id.* at ¶¶ 54 to 56, 59, 76 to 79, 82, 99 to 102, 105, 122 to 124, 127, 144 to 146 and 149, and as the agent of Mardaph II, LLC and Mardaph III, LLC for the rental units at 711 Marion Road, 8750 Venus Drive, 2605 Fenton Avenue, 2637 Fenton Avenue, 2639 Fenton Avenue, and 3341 McHenry Avenue, Cincinnati, Ohio. *Id.* at ¶¶ 43, 45, 47, 49, 51, 53, 60, 65, 67, 69, 71, 73, 75, 83, 88, 90, 92, 94, 96, 98, 106, 111, 113, 115, 117, 119, 121, 128, 133, 135, 137, 139, 141, 143 and 150. These failures are violations of 40 C.F.R. §745.113(b), 40 C.F.R. §745.100, 42 U.S.C. §4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. §2689.

Service of the complaint was made by certified mail to the listed registered agent of Respondents Mardaph II, LLC and Mardaph III, LLC and the home address of Respondent Vinnie Wilson. See Exhibit 7, Certificate of Service. On August 22, 2008, U.S. EPA received a copy of a letter and attachments from the registered agent Jeffrey Greenberger to Vinnie Wilson. See Exhibit 8. In the letter, Mr. Greenberger stated though he had resigned as the registered agent for the various Mardaph LLC's, he was forwarding the complaints to Ms. Wilson. *Id.* The address that he used was the same as the address that U.S. EPA used for the administrative complaint. *Id.*¹

The complaint was sent to Respondent Vinnie Wilson by certified mail. A notice was left at Respondent's address on August 7, 2008 but was not signed for and the package was

¹ Mr. Greenberger's notice of resignation, which was an attachment to his August 20, 2008 letter, is dated July 31, 2008. Thus, he resigned prior to service of the complaint to Respondent Vinnie Wilson. No other registered agent for these corporations has been retained at this time. However, since Mr. Greenberger forwarded the complaints on to Respondent Vinnie Wilson, the president of the corporations, service on these entities could be considered proper. U.S. EPA is not, however, seeking a default judgment against these entities at this time.

returned. See Exhibit 9. On August 14, 2008, Federal Express left the complaint at the Respondent's garage. See Exhibit 10. An additional attempt of delivery by Federal Express was made but the delivery service couldn't obtain a signature and it was returned to shipper. See Exhibit 11.

As a result, U.S. EPA chose to try personal service of the complaint and enlisted the services of the Ohio Department of Health (ODH). Christopher Mizek, Sanitarian Program Specialist at ODH, achieved service of the complaint on Respondent Vinnie Wilson on behalf of Complainant on October 22, 2008. See Exhibit 12, Certificate of Service and Exhibit 13, Affidavit of Christopher Mizek.

Following service of the complaint, Respondent Vinnie Wilson had 30 days to file an answer. 40 C.F.R. §22.15(a). Thus, an answer was due on or before November 24, 2008. No answer has been received by U.S. EPA or filed with the Regional Hearing Clerk.

Argument

Pursuant to 40 C.F.R. §22.17(a), a party may be found to be in default "upon failure to file a timely answer to the complaint." It is clear that Respondent Wilson was properly served with the complaint by personal service on October 22, 2008. See Exhibits 12 and 13. Since, the Respondent has failed to file an answer to the complaint, Respondent Vinnie Wilson is in default. Pursuant to 40 C.F.R. §22.17(a), a default by the Respondent constitutes an admission of the facts alleged in the complaint. See also, In the Matter of Frank J. Davis, Docket No. TSCA-05-2007-0002, 2008 EPA ALJ Lexis 12 (March 31, 2008); In the Matter of Bar Development Water User's Association, et al, 2006 EPA RJO Lexis 545, (January 10, 2006).

The admission of the facts set forth in the complaint establishes a prima facie case of liability against Respondent Vinnie Wilson. To state a prima facie case here, U.S. EPA needs to show that the rental units in question are target housing, that the Respondent is the owner or agent for each of the rental units in questions, and that the requirements of the Disclosure Rule were not met at each rental unit. As set forth in the complaint and above, the Respondent Vinnie Wilson is alleged to have committed 47 violations of TSCA. At the inspection on March 14, 2007, U.S. EPA looked at 11 rental units that were owned by the Respondents. Ten of the rental units are the subject of the complaint. According to reports from the Hamilton County Auditor, each of these rental units was constructed prior to 1978 and thus all are considered to be target housing and subject to the Disclosure Rule. See Exhibits 14 to 23. Respondent Vinnie Wilson is the listed owner of four of the rental units, 2636 Fenton Avenue, 1815 Clarion Avenue, 4537 Lucerne Avenue and 1530 Kinney Avenue. See Exhibits 14 to 17. Mardaph II, LLC is listed as the owner of 8750 Venus Drive and 711 Marion Road. See Exhibits 18 to 19. Mardaph III, LLC is listed as the owner of four rental units, 2605 Fenton Avenue, 2637 Fenton Avenue, 2639 Fenton Avenue² and 3341 McHenery Avenue. See Exhibits 20 to 23. It is clear that Respondent Vinnie Wilson was the agent for Mardaph II, LLC and Mardaph III, LLC for the rental units in Exhibits 18 to 23 as she is the landlord on all of the leases, is listed as the lessor and is the one who signed all of the leases. See Exhibits 18 to 23. Further, Respondent Vinnie Wilson is the president of Mardaph II, LLC and Mardaph III, LLC and thus is the ultimate owner of the rental units. See Exhibit 1-Attachment C.

² The rental unit at 2639 Fenton Avenue is a duplex and has multiple addresses, which includes 2637 Fenton Avenue. There is no separate listing for 2637 Fenton Avenue in the Hamilton County database.

During the March 2007 inspection, only one of the rental units, 2636 Fenton Avenue, had any of the required documents. See Exhibit 14. The 2636 Fenton Avenue lease did have a lead warning statement, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113 (b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. §2696, and the signatures of the Lessor and Lessee certifying to the accuracy of their statements to the best of their knowledge and the dates of signature. *Id.* Thus, for this rental unit, there are two violations of the Disclosure Rule: a failure to provide a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, 40 CFR §745.113(b)(2) and a failure to provide a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, 40 CFR §745.113(b)(3). For the other nine rental units at 1815 Clarion Avenue, 2605 Fenton Avenue, 2637 Fenton Avenue, 2639 Fenton Avenue, 4537 Lucerne Avenue, 1539 Kinney Avenue, 711 Marion Road, 341 McHenry Avenue and 8750 Venus Drive, Respondent Vinnie Wilson did not have any of the required documents or disclosures and none were later provided by the Respondent, though given the opportunity. See Exhibits 15 to 23. At each rental unit, the Respondent therefore failed: to provide a lead warning statement, 40 CFR §745.113(b)(1); to provide a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence, 40 CFR §745.113(b)(2); to provide a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records existed, 40 CFR §745.113(b)(3); to provide a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113(b)(2) and (b)(3), and the lead hazard information

pamphlet required under 15 U.S.C. §2696, 40 CFR §745.113(b)(4); and to have the signatures of the lessor, agent and the lessee certifying to the accuracy of their statements to the best of their knowledge and the dates of such signatures before the lessees were obligated under the contract for each of the leasing transactions, 40 CFR §745.113(b)(6). Thus, there were five violations of the Disclosure Rule at each rental unit for a total of 45 violations. When added with the violations at the 2636 Fenton Avenue, this resulted in the 47 violations that are listed in the complaint. Thus, U.S. EPA has shown a prima facie case that Respondent Vinnie Wilson is the owner or the agent of all ten rental units that were constructed prior to 1978 and that Respondent Vinnie Wilson failed to make the required disclosures under the Disclosure Rule.

Upon a motion for default, a party can “request the assessment of a penalty . . . against the defaulting party” and if done, “the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.” 40 C.F.R. §22.17(b). U.S. EPA requests that an order for default be entered for a penalty of \$91,090. In assessing the appropriate penalty, it is required that “the amount of the recommended civil penalty [be] based on the evidence in the record and in accordance with any penalty criteria set forth in the Act” and one must also “consider any civil penalty guidelines issued under the Act.” 40 C.F.R. §22.27(b) and *In the Matter of Frank J. Davis*, Docket No. TSCA-05-2007-0002, 2008 EPA ALJ Lexis 12 (March 31, 2008).

In calculating the penalty, U.S. EPA looked to the existing guidance -Section 1018 Disclosure Rule Enforcement Response Policy - December 2007 (Penalty Policy). See Exhibit 24. Under the Penalty Policy, the penalty is determined in two stages: (1) the determination of a “gravity-based penalty” and (2) adjustments to the gravity-based penalty. The gravity-based penalty is calculated by considering: (1) the nature of the violation; (2) the circumstance of the

violation; and (3) the extent of harm that may result from the violation. Once the gravity-based penalty has been determined, upward or downward adjustments may be made to the penalty amount by considering other factors, including: (1) ability to pay/continue in business; (2) history of prior violations; (3) degree of culpability; and (4) such other factors as justice may require, which include, no known risk of exposure, the violator's attitude, consideration of supplemental environmental projects, audit policy, voluntary disclosure, size of business, adjustment for small independent owners and lessors, and the economic benefit of noncompliance. See also *In the Matter of Frank J. Davis*, Docket No. TSCA-05-2007-0002, 2008 EPA ALJ Lexis 12 (March 31, 2008).

With regard to the nature of the violations, violations of the Disclosure Rule are considered hazard assessment in nature since the information is important to allow lessees to make informed decisions. Exhibit 24 at 9.

The next step in calculating the penalty is the extent of the level of violation. A major violation occurs if there is a child under the age of six in the target housing. *Id.* - Appendix B at 29. A significant violation occurs if there is a child between the ages of 6 and 18 years old living at the target housing. *Id.* A minor violation occurs if everyone at the target housing is over 18 years of age. *Id.* According to the lease or rental application, at two properties, 2636 Fenton Avenue and 8750 Venus Drive, there were children under the age of six living in the rental units. See Exhibits 14 and 18. At the Venus Drive address, there was a 1 year old child, a 4 year old child, and a 13 year old child living in the rental unit. See Exhibit 18. At the Fenton Avenue address, there were children ages 3, 8, 13 and 15 years old living in the rental unit. See Exhibit 14. At two properties, 1815 Clarion Avenue and 3341 McHenry Avenue, there were children between the ages of 6 and 18 years old living in the rental unit. See Exhibits 15 and 23. At the

Clarion Avenue address, there was a 14 year old child living in the rental unit. See Exhibit 15. At the McHenry Avenue address, there were 2 children living in the rental unit, ages 15 and 16 years old. See Exhibit 23. The remaining addresses did not identify any individual under the age of 18. See Exhibits 16, 17, 19 to 22. Thus, there were two major, two significant and six minor violations.

Next to be determined is the circumstance of the violation. "Circumstances reflect the probability of harm resulting from a particular type of violation." Exhibit 24 at p. 12. The Penalty Policy established a ranking system for potential violations using six levels. A level 1 or 2 circumstance is for violations that have a high probability of impairing the lessee's ability to consider the information required to be disclosed. A level 3 or 4 circumstance is considered to have a medium probability of impairing the lessees while a level 5 or 6 circumstance have a low probability of impairing the lessee's ability. Pursuant to Appendix B of the Penalty Policy, a failure to include the warning statement is a level 2 circumstance violation. See Exhibit 25. The failure to include a statement by the lessor of the presence of known lead-based paint, or a statement indicating no such knowledge, is a level 3 violation. *Id.* The failure to provide a list of records or reports on the presence of any known lead-based paint or indicate that no such records are available is a level 5 violation. *Id.* The failure to include a statement by lessee affirming receipt of the lead hazard pamphlet and the information from (b) (2) and (3) is a level 4 violation. *Id.* And lastly, the failure to have the signature of the lessor, agent and lessee certifying the accuracy of the statements is a level 6 violation. *Id.* Using the level of violation and extent, U.S. EPA was able to calculate a penalty for each count. See Exhibit 25- Penalty Calculation Memo. As noted in Exhibits 8 and 25, the penalty calculated for Respondent Wilson was \$91,090.

U. S EPA did not receive any information from the Respondent as to its ability to pay, history of prior violations, degree of culpability, voluntary disclosure of violations or any other information that may have a bearing on the penalty. Thus, U.S. EPA did not adjust the penalty either upward or downward. The statutory maximum penalty for these violations is \$517,000³. By using the statutory requirements and the penalty policy, U.S. EPA has calculated a fair and reasonable penalty of \$91,090 for these violations. Since the Respondent has provided no information regarding the penalty, U.S. EPA's determination should be accepted.

Conclusion

Since Respondent Vinnie Wilson was properly served with an Administrative Complaint and has failed to file an answer or otherwise respond, the entry of a default judgment against the Respondent is proper. Further, the entry of a default judgment in the amount listed in the complaint of \$91,090 is proper. U.S. EPA therefore requests that the Regional Hearing Officer enter an order of a default judgment in the amount of \$91,090 against Respondent Vinnie Wilson.

Submitted this 22nd day of January 2009.



Peter Felitti
Assistant Regional Counsel
U.S. Environmental Protection Agency

³ The maximum penalty is calculated by multiplying the number of counts/violations in the complaint (47) by the statutory maximum of \$11,000 for each violation.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing was served on the Regional Hearing Clerk, U.S. EPA, Region 5, and that true and correct copies were served on the Regional Hearing Officer and Respondent Vinnie Wilson Steel with delivery by first class mail on January 22 2009 to:

Vinnie Wilson
7923 Rambler Place
Cincinnati, Ohio 45231

Dated this 22nd day of January 2009.



Peter Felitti
Assistant Regional Counsel
U.S. EPA, Region 5