



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
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August 23, 2010

122 Chestnut, L.L.C.
c/o Leon Charkoudian
122 Chestnut Street
Springfield, MA 01103

Re: In the Matter of 122 Chestnut, L.L.C.
Docket Number TSCA-01-2010-0046

Dear Mr. Charkoudian:

Enclosed is an administrative Complaint that the U.S. Environmental Protection Agency ("EPA") is issuing to 122 Chestnut, L.L.C. ("122 Chestnut") as a result of our determination that 122 Chestnut has violated the lead-based paint disclosure requirements set forth at 40 C.F.R. Part 745, Subpart F. Pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2615(a), EPA is seeking civil penalties in the amount of \$83,575.

This enforcement action is based upon information collected during an EPA compliance inspection and information provided by 122 Chestnut to EPA in response to a TSCA subpoena. The attached Complaint discusses the statutory authorities for EPA's enforcement action, the nature of the alleged violations, and the proposed penalties. A copy of EPA's Section 1018 Disclosure Rule Enforcement Response and Penalty Policy is enclosed for your information.

Please be advised that 122 Chestnut has the right to request a hearing regarding the violations alleged in the Complaint and the appropriateness of the proposed penalties. If 122 Chestnut wishes to request a hearing, it must submit, within thirty days of receiving this letter, a written request to the EPA Regional Hearing Clerk at the address set forth in the enclosed Complaint. The written request, which must be submitted with an Answer to the Complaint, must follow the requirements of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties, set forth at 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is enclosed. If 122 Chestnut does not submit an answer within the thirty day period, it may be found in default. Once in default, 122 Chestnut will have waived its right to a hearing and each allegation of violation will be deemed to be admitted. As a result, the full amount of the proposed penalty may be assessed against 122 Chestnut.

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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Also enclosed is EPA's Information Sheet for Small Business Resources, which may be applicable to 122 Chestnut.

Please note that many Respondents perform Supplemental Environmental Projects ("SEPs") as part of their settlements with EPA. SEPs are environmentally beneficial projects that a Respondent agrees to undertake in settlement of an environmental enforcement action and that the Respondent is not otherwise legally required to perform. In return, EPA considers some percentage of the cost of the SEP as a factor in establishing the final penalty that the Respondent will pay. EPA has issued a SEP Policy to help Respondents and EPA staff determine: (a) whether a proposed SEP is acceptable; and (b) how much of the penalty should be mitigated if the Respondent performs the proposed SEP. A copy of that policy is enclosed.

Also, please note that it is this office's policy to issue a press release upon filing or resolving an administrative enforcement action.

To avoid protracted and potentially expensive litigation, EPA is willing to engage in settlement negotiations. If you wish to explore the possibility of settlement or if you have any questions, please contact Peter DeCambre, Senior Enforcement Counsel, of my staff at (617) 918-1890.

Sincerely yours,



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency - Region 1

Enclosures

1. Complaint
2. Proposed Penalty Summary
3. Section 1018 Disclosure Rule Enforcement Response and Penalty Policy
4. Consolidated Rules of Practice (40 C.F.R. Part 22)
5. Copy of letter to Hearing Clerk
6. Copy of Certificate of Service
7. EPA's Information Sheet for Small Business Resources
8. EPA SEP Policy

cc: Michael S. Schneider, Esq.

of 1992 (“the Act”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”). Complainant seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by Complainant of civil and/or criminal penalties. In support of its Complaint, Complainant alleges the following:

III. STATUTORY AND REGULATORY BACKGROUND

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, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account in the rental of homes and apartments.

4. In 1996, the United States Environmental Protection Agency (“EPA”) promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart 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, 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.

6. The implementing regulations set forth at 40 C.F.R. Part 745, Subpart F, require sellers and lessors of target housing, among other things, to provide to purchasers and lessees a lead hazard information pamphlet; including as an attachment, or within the contract to lease target housing, a Lead Warning Statement; a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof; and a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with the Subpart F disclosure requirements is a violation of TSCA Section 409, 15 U.S.C. § 2689.

8. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of TSCA Section 409, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty.

9. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation applicable under Section 16 shall be no more than \$10,000. For violations occurring after July 28, 1997 but prior to January 13, 2009, the penalty shall be no more than \$11,000. As of January 13, 2009, the maximum penalty for each violation is \$16,000 pursuant to the Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 73,340).

IV. GENERAL ALLEGATIONS

10. Respondent, 122 Chestnut, L.L.C. ("122 Chestnut"), is a limited liability corporation organized under the laws of Massachusetts with a principal place of business located at 122 Chestnut Street, Springfield, Massachusetts.

11. At all times relevant to this Complaint, Respondent owned and offered for lease 99 apartment units located at 122 Chestnut Street, Springfield, Massachusetts.

12. Respondent is an “owner” and “lessor” as defined in 40 C.F.R. § 745.103, of the housing described in Paragraph 11 above.

13. Respondent offered for lease the following units to the lessees listed below, on the dates set forth below:

- a. On September 14, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 309, Springfield, MA. One child under six years of age was resident;
- b. On September 24, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 12, Springfield, MA;
- c. On September 16, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- d. On November 20, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 101, Springfield, MA;
- e. On February 1, 2008, a lessee signed a lease agreement for 122 Chestnut Street, Unit 102, Springfield, MA;
- f. On June 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 115, Springfield, MA;
- g. On July 15, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 9, Springfield, MA;
- h. On August 7, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- i. On September 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 5, Springfield, MA; and
- j. On September 8, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 401, Springfield, MA.

14. The housing units listed in Paragraph 13 above currently are, and at the time of the violations alleged in this Complaint were “target housing,” as defined in 40 C.F.R. § 745.103, and do not qualify for any of the exemptions to the provisions of the Act or the Disclosure Rule.

15. On July 15, 2008, EPA inspectors conducted an inspection at 122 Chestnut Street, Springfield, Massachusetts, to evaluate Respondent’s compliance with the

Disclosure Rule. During the inspection, Leon Charkoudian, manager of 122 Chestnut L.L.C., stated to the EPA inspectors that he has never given any lead disclosure information to his tenants. During the inspection, the EPA inspectors informed Mr. Charkoudian of his obligations under the Disclosure Rule.

16. During the inspection, Mr. Charkoudian stated that he had not provided any lead disclosure information to tenants of 122 Chestnut because the entire property was renovated in 1984, except for the window aprons, and he believed the property to be lead-based paint free. However, Respondent could not provide any documentation showing that the property was “lead free.”

17. On November 3, 2008, representatives of the U.S. Department of Housing and Urban Development (“HUD”) conducted an inspection pursuant to regulations at 24 C.F.R. Part 5 and Part 200 for physical conditions standards applicable to HUD multifamily housing properties at 122 Chestnut Street, Springfield, Massachusetts. The property failed the inspection for, among other things: not having lead-based paint disclosure forms; not having a lead-based paint inspection report; peeling paint in various units; and exigent health and safety deficiencies in various parts of the building.

18. On May 29, 2009, representatives of HUD conducted an inspection pursuant to regulations at 24 C.F.R. Part 5 and Part 200 for physical conditions standards applicable to HUD multifamily housing properties at 122 Chestnut Street, Springfield, Massachusetts. The property again failed inspection for, among other things: not having lead-based paint disclosure forms; not having a lead-based paint inspection report; peeling paint in common areas and various units; and exigent health and safety deficiencies in various parts of the building.

19. October 14, 2009, EPA issued TSCA Subpoena Number 2010-010 to 122 Chestnut, L.L.C. and Leon Charkoudian requesting information necessary to evaluate compliance with the Act and the Disclosure Rule.

20. On January 6, 2010, counsel for Respondent responded to the subpoena on behalf of 122 Chestnut, L.L.C. and Leon Charkoudian. Included in Respondent's subpoena response were the results of a lead-based paint inspection/risk assessment conducted at 122 Chestnut Street on December 9-11, 2009 by J&M Inspection Services, Inc. which indicated the presence of lead-based paint in a common area and in one apartment unit at the property.

21. Also included in Respondent's January 6, 2010 subpoena response were lease agreements for the period of April 1, 2009 to September 30, 2009. With respect to all of the lease agreements provided, Respondent failed to provide lead disclosure information to tenants of 122 Chestnut.

V. VIOLATIONS

22. Based on Complainant's review of documentation contained in Respondent's files, information submitted to Complainant by Respondent and information gathered by EPA, EPA has identified the following violations of the Act:

Count I – Failure to provide lessees with an EPA-approved lead hazard information pamphlet.

23. Paragraphs 1 through 22 above are incorporated by reference as if fully set forth herein.

24. Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor is required to provide a lessee, before the lessee is obligated under any contract to lease target housing, with an EPA-approved lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home*, or an equivalent pamphlet that has been approved for use in particular States by EPA.

25. Respondent failed to provide the following lessees with an EPA-approved lead hazard information pamphlet before the lessees became obligated under a contract to lease target housing:

- a. On September 14, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 309, Springfield, MA. One child under six years of age was resident;
- b. On September 24, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 12, Springfield, MA;
- c. On September 16, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- d. On November 20, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 101, Springfield, MA;
- e. On February 1, 2008, a lessee signed a lease agreement for 122 Chestnut Street, Unit 102, Springfield, MA;
- f. On June 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 115, Springfield, MA;
- g. On July 15, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 9, Springfield, MA;
- h. On August 7, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- i. On September 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 5, Springfield, MA; and
- j. On September 8, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 401, Springfield, MA.

26. Respondent's failure to provide the lessees of target housing listed in paragraph 25 above with an EPA-approved lead hazard information pamphlet prior to the lessees being obligated to lease target housing constitutes ten (10) violations of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409, 15 U.S.C. § 2689.

Count II – Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement.

27. Paragraphs 1 through 26 above are incorporated by reference as if fully set forth herein.

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

29. Respondent failed to include as an attachment, or within the following contracts to lease target housing, the Lead Warning Statement:

- a. On September 14, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 309, Springfield, MA. One child under six years of age was resident;
- b. On September 24, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 12, Springfield, MA;
- c. On September 16, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- d. On November 20, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 101, Springfield, MA;
- e. On February 1, 2008, a lessee signed a lease agreement for 122 Chestnut Street, Unit 102, Springfield, MA;
- f. On June 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 115, Springfield, MA;
- g. On July 15, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 9, Springfield, MA;
- h. On August 7, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- i. On September 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 5, Springfield, MA; and
- j. On September 8, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 401, Springfield, MA.

30. Respondent's failure to include the Lead Warning Statement as an attachment or within the contracts to lease the target housing units listed in paragraph 29 above constitutes ten (10) violations of 40 C.F.R. § 745.113(b)(1), and TSCA Section 409, 15 U.S.C. § 2689.

Count III - Failure to include in the lease or as an attachment thereto, a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof.

31. Paragraphs 1 through 30 above are incorporated by reference as if fully set forth herein.

32. 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 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.

33. Respondent failed to include, as an attachment or within the lease contracts with the following lessees, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating the lack of knowledge of the presence of lead-based paint and/or lead-based paint hazards:

- a. On September 14, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 309, Springfield, MA. One child under six years of age was resident;
- b. On September 24, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 12, Springfield, MA;
- c. On September 16, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- d. On November 20, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 101, Springfield, MA;
- e. On February 1, 2008, a lessee signed a lease agreement for 122 Chestnut Street, Unit 102, Springfield, MA;
- f. On June 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 115, Springfield, MA;
- g. On July 15, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 9, Springfield, MA;
- h. On August 7, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- i. On September 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 5, Springfield, MA; and

- j. On September 8, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 401, Springfield, MA.

34. Respondent's failure to include as an attachment or within the lease contracts listed in paragraph 33 above, 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 constitutes ten (10) violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

Count IV - Failure to include as an attachment or within a lease contract, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or the failure to indicate that no such records exist.

35. Paragraphs 1 through 34 above are incorporated by reference as if fully set forth herein.

36. 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 lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist.

37. Respondent failed to include as an attachment or within the following lease contracts, a list of records or reports that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist:

- a. On September 14, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 309, Springfield, MA. One child under six years of age was resident;
- b. On September 24, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 12, Springfield, MA;

- c. On September 16, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- d. On November 20, 2007, a lessee signed a lease agreement for 122 Chestnut Street, Unit 101, Springfield, MA;
- e. On February 1, 2008, a lessee signed a lease agreement for 122 Chestnut Street, Unit 102, Springfield, MA;
- f. On June 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 115, Springfield, MA;
- g. On July 15, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 9, Springfield, MA;
- h. On August 7, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 506, Springfield, MA;
- i. On September 1, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 5, Springfield, MA; and
- j. On September 8, 2009, a lessee signed a lease agreement for 122 Chestnut Street, Unit 401, Springfield, MA.

38. Respondent's failure to include, as an attachment or within the lease contracts listed in Paragraph 37 above, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist constitutes ten (10) violations of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

VI. PROPOSED PENALTY

39. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation applicable under Section 16 shall be no more than \$10,000. For violations occurring after July 28, 1997 but prior to January 13, 2009, the penalty shall be no more than \$11,000. As of January 13, 2009, the maximum penalty for each violation is \$16,000 pursuant to the Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 73,340).

40. The proposed civil penalties have been determined in accordance with TSCA Section 16, 15 U.S.C. § 2615, which requires the Complainant to consider the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. The penalties are also calculated in accordance with the provisions of 40 C.F.R. § 745.118(f). To develop the proposed penalties 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* ("ERPP"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

41. The provisions violated and the corresponding penalties are as follows:

<u>Provision Violated</u>	<u>Requirement</u>	<u>Penalty</u>
1) 40 C.F.R. § 745.107(a)(1)	Failure to provide an EPA-approved lead hazard information pamphlet.	\$35,520
2) 40 C.F.R. § 745.113(b)(1)	Failure to include as an attachment to, or within the contract to lease target housing, the Lead Warning Statement.	\$25,070
3) 40 C.F.R. § 745.113(b)(2)	Failure to include in the lease or as an attachment thereto, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof.	\$15,070
4) 40 C.F.R. § 745.113(b)(3)	Failure to include as an attachment or within a lease contract, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or the failure to indicate that no such records exist	\$5,070

10% Culpability	\$2,845 ¹
Total Penalty:	\$83,575

42. Respondent shall pay the civil penalty with a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on this check the docket number of this Complaint (EPA Docket No. TSCA-01-2010-0046).

The check shall 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, notice of payment of the civil penalty and copies of the check should be forwarded to:

Ms. Wanda Santiago
 Regional Hearing Clerk
 U.S. Environmental Protection Agency-Region 1
 5 Post Office Square, Suite 100 (ORA 18-1)
 Boston, Massachusetts 02109 - 3912.

and

Peter DeCambre
 Senior Enforcement Counsel
 Office of Environmental Stewardship
 U.S. Environmental Protection Agency
 5 Post Office Square, Suite 100 (OES 4-1)
 Boston, Massachusetts 02109 - 3912.

¹ A ten percent increase for culpability has been added to the five leases which Respondent entered into after the July 15, 2008 EPA inspection.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

43. As provided by Section 16(2)(A) of TSCA, 15 U.S.C. § 2615(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint.** In its answer, Respondent may contest any material fact contained in the Complaint. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intend to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

VIII. DEFAULT ORDER

44. If Respondent fails to file a timely answer to the Complaint, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(2)(A) of TSCA, 15 U.S.C. § 2615(2)(A). The penalty assessed in this Complaint shall become

due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c).

IX. SETTLEMENT CONFERENCE

45. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

46. Please note that a request for an informal settlement conference does not extend the period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Peter DeCambre, Senior Enforcement Counsel, Office of Environmental Stewardship, EPA Region I, at the address cited above or at (617) 918-1890. Peter DeCambre has been designated to represent Complainant and receive service in this action.

47. The following documents are attachments to this Complaint:

1. Proposed Penalty Summary
2. Section 1018 Disclosure Rule Enforcement Response Policy
3. Consolidated Rules of Practice



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109 - 3912

Aug 23, 2010
Date

ATTACHMENT 1

In the Matter of 122 Chestnut, L.L.C.,
Docket Number TSCA-01-2010-0046

PROPOSED PENALTY SUMMARY

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), EPA proposes a civil penalty in the amount of eighty three thousand six hundred dollars (\$83,575)¹ to be assessed against 122 Chestnut, L.L.C., ("Respondent") as follows:

COUNT 1. FAILURE TO PROVIDE LESSEES WITH AN EPA-APPROVED LEAD HAZARD INFORMATION PAMPHLET

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home*, or an equivalent pamphlet that has been approved for use by EPA.

Circumstance Level: Failure to provide a lessee an EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.107(a)(1), results in a *high probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

¹ Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation applicable under Section 16 shall be no more than \$10,000. For violations occurring after July 28, 1997 but prior to January 13, 2009 the penalty shall be no more than \$11,000. As of January 13, 2009, the maximum penalty for each violation is \$16,000 pursuant to the Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 73,340).

Respondent failed to provide an EPA-approved lead hazard information pamphlet to the following lessees:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty	Adjustments ²
122 Chestnut St., # 12	9/24/2007	None	Minor	\$2,580	
122 Chestnut St., # 101	11/20/2007	None	Minor	\$2,580	
122 Chestnut St., # 102	2/1/2008	None	Minor	\$2,580	
122 Chestnut St., # 309	9/14/2007	Less than 6 years old	Major	\$11,000	
122 Chestnut St., # 506	11/16/2007	None	Minor	\$2,580	
122 Chestnut St., # 115	6/1/2009	None	Minor	\$2,840	\$284
122 Chestnut St., # 9	7/15/2009	None	Minor	\$2,840	\$284
122 Chestnut St., # 506	8/7/2009	None	Minor	\$2,840	\$284
122 Chestnut St., # 5	9/1/2009	None	Minor	\$2,840	\$284
122 Chestnut St., # 401	9/8/2009	None	Minor	\$2,840	\$284
Total				\$35,520	\$36,940

COUNT 2. FAILURE TO INCLUDE AS AN ATTACHMENT, OR WITHIN A CONTRACT TO LEASE TARGET HOUSING, THE LEAD WARNING STATEMENT

Provision Violated: 40 C.F.R. § 745.113(b)(1) requires that each contract to lease target housing include as an attachment, or within the contract, the Lead Warning Statement.

Circumstance Level: Failure to include the Lead Warning Statement in the language of the lease contract, or an attachment thereto, pursuant to 40 C.F.R. § 745.113(b)(1), results in a *high probability* of impairing a lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERP appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target

² A ten percent increase to the penalty was added because Respondent continued to fail to provide lead disclosure information to tenants of 122 Chestnut after the EPA inspection even though EPA inspectors during the inspection explained Respondent’s obligations under the Disclosure Rule. Post-inspection test results conducted by Respondent indicated the presence of lead-based paint in a common area and in one apartment unit at the property. The ten percent increase is assigned to the five leases which Respondent entered into after the July 15, 2008 EPA inspection.

housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to include the Lead Warning Statement as an attachment or within the contract to the following leases:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty	Adjustments ³
122 Chestnut St., # 12	9/24/2007	None	Minor	\$1,550	
122 Chestnut St., # 101	11/20/2007	None	Minor	\$1,550	
122 Chestnut St., # 102	2/1/2008	None	Minor	\$1,550	
122 Chestnut St., # 309	9/14/2007	Less than 6 years old	Major	\$10,320	
122 Chestnut St., # 506	11/16/2007	None	Minor	\$1,550	
122 Chestnut St., # 115	6/1/2009	None	Minor	\$1,710	\$171
122 Chestnut St., # 9	7/15/2009	None	Minor	\$1,710	\$171
122 Chestnut St., # 506	8/7/2009	None	Minor	\$1,710	\$171
122 Chestnut St., # 5	9/1/2009	None	Minor	\$1,710	\$171
122 Chestnut St., # 401	9/8/2009	None	Minor	\$1,710	\$171
Total				\$25,070	\$25,925

COUNT 3. FAILURE TO INCLUDE IN A LEASE, OR AS AN ATTACHMENT THERETO, A STATEMENT BY THE LESSOR DISCLOSING THE PRESENCE OF KNOWN LEAD-BASED PAINT OR LEAD-BASED PAINT HAZARDS, OR LACK OF KNOWLEDGE THEREOF

³ A ten percent increase to the penalty was added because Respondent continued to fail to provide lead disclosure information to tenants of 122 Chestnut after the EPA inspection even though EPA inspectors during the inspection explained Respondent's obligations under the Disclosure Rule. Post-inspection test results conducted by Respondent indicated the presence of lead-based paint in a common area and in one apartment unit at the property. The ten percent increase is assigned to the five leases which Respondent entered into after the July 15, 2008 EPA inspection.

Provision Violated: 40 C.F.R. § 745.113(b)(2) requires that each contract to lease target housing include, as an attachment or within the lease 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.

Circumstance Level: Failing to include the statement of knowledge of lead-based paint and/or lead-based paint hazards as an attachment, or within the contract to lease target housing, results in a *medium probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in the housing, violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Disclosure Rule ERP, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to include as an attachment or within the following leases 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 to the following leases:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty	Adjustments ⁴
122 Chestnut St., # 12	9/24/2007	None	Minor	\$770	
122 Chestnut St., # 101	11/20/2007	None	Minor	\$770	
122 Chestnut St., # 102	2/1/2008	None	Minor	\$770	
122 Chestnut	9/14/2007	Less than 6 years	Major	\$7,740	

⁴ A ten percent increase to the penalty was added because Respondent continued to fail to provide lead disclosure information to tenants of 122 Chestnut after the EPA inspection even though EPA inspectors during the inspection explained Respondent's obligations under the Disclosure Rule. Post-inspection test results conducted by Respondent indicated the presence of lead-based paint in a common area and in one apartment unit at the property. The ten percent increase is assigned to the five leases which Respondent entered into after the July 15, 2008 EPA inspection.

St., # 309		old			
122 Chestnut St., # 506	11/16/2007	None	Minor	\$770	
122 Chestnut St., # 115	6/1/2009	None	Minor	\$850	\$85
122 Chestnut St., # 9	7/15/2009	None	Minor	\$850	\$85
122 Chestnut St., # 506	8/7/2009	None	Minor	\$850	\$85
122 Chestnut St., # 5	9/1/2009	None	Minor	\$850	\$85
122 Chestnut St., # 401	9/8/2009	None	Minor	\$850	\$85
Total				\$15,070	15,495

COUNT 4. FAILURE TO INCLUDE IN A LEASE, OR AS AN ATTACHMENT THERETO, A LIST OF ANY RECORDS THAT PERTAIN TO LEAD HAZARDS OR TO INDICATE THAT NO SUCH LIST EXISTS.

Provision Violated: 40 C.F.R. § 745.113(b)(3) requires that each contract to lease target housing include, as an attachment or within the lease contract, a list of any records or reports available to the Lessor that pertain to lead hazard information or indicate that no such list exists.

Circumstance Level: Failing to include a list of any records pertaining to lead hazards or to indicate that no such records exist, as an attachment, or within the contract to lease target housing, results in a *low probability* of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in the housing, violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Disclosure Rule ERP, a violation of 40 C.F.R. § 745.113(b)(3) is a *Level 5* violation.

Extent of Harm: The Disclosure Rule ERP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to include, as an attachment or within the lease contracts to the following leases, a list of any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty	Adjustments ⁵
122 Chestnut St., # 12	9/24/2007	None	Minor	\$260	
122 Chestnut St., # 101	11/20/2007	None	Minor	\$260	
122 Chestnut St., # 102	2/1/2008	None	Minor	\$260	
122 Chestnut St., # 309	9/14/2007	Less than 6 years old	Major	\$2,580	
122 Chestnut St., # 506	11/16/2007	None	Minor	\$260	
122 Chestnut St., # 115	6/1/2009	None	Minor	\$290	\$29
122 Chestnut St., # 9	7/15/2009	None	Minor	\$290	\$29
122 Chestnut St., # 506	8/7/2009	None	Minor	\$290	\$29
122 Chestnut St., # 5	9/1/2009	None	Minor	\$290	\$29
122 Chestnut St., # 401	9/8/2009	None	Minor	\$290	\$29
Total				\$5,070	\$5,215

⁵ A ten percent increase to the penalty was added because Respondent continued to fail to provide lead disclosure information to tenants of 122 Chestnut after the EPA inspection even though EPA inspectors during the inspection explained Respondent's obligations under the Disclosure Rule. Post-inspection test results conducted by Respondent indicated the presence of lead-based paint in a common area and in one apartment unit at the property. The ten percent increase is assigned to the five leases which Respondent entered into after the July 15, 2008 EPA inspection.

EPA DOCKET NO. TSCA-01-2010-0046
In Re: 122 Chestnut, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Wanda Rivera
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, Massachusetts 02109 - 3912

Copy by Certified Mail,
Return Receipt Requested

Michael S. Schneider
Doherty, Wallace, Pillsbury & Murphy, P.C.
One Monarch Place, Suite 1900
Springfield, MA 01144-1900

122 Chestnut, L.L.C.
c/o Leon Charkoudian
122 Chestnut Street
Springfield, MA 01103

Dated: 8/24/10



Peter DeCambre
Senior Enforcement Counsel
U.S. Environmental Protection Agency,
Region 1
5 Post Office Square, Suite 100 (OES 4-1)
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