



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

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SEP 23 2014

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BY HAND

September 23, 2014

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

Re: In Re Garden Homes Management Corporation, Docket No. TSCA-01-2014-0042.

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Complaint and Notice of Opportunity for Hearing, which seeks civil penalties for alleged violations of Sections 15 and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and federal regulations promulgated under TSCA and the Act.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hugh W. Martinez".

Hugh W. Martinez, Senior Enforcement Counsel
Counsel for Complainant

Enclosures

cc: Richard Freedman, President, Garden Homes Management Corp.
Ronnie Levin, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

RECEIVED

SEP 23 2014

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Office of Regional Hearing Clerk

In the Matter of:)

Garden Homes Management Corporation)
29 Knapp Street)
Stamford, Connecticut 06902,)

Respondent.)

Proceeding under Section 16(a) of the)
the Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)

Docket No.
TSCA-01-2014-0042

**COMPLAINT
AND
NOTICE OF OPPORTUNITY
FOR HEARING**

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), regulations implementing TSCA at 40 C.F.R. §§ 745.87 and 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency (“EPA”), Region 1 – New England.

2. The Respondent in this action, Garden Homes Management Corporation (“Garden Homes” or “Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and federal regulations promulgated under TSCA and the Act, including 40 C.F.R. Part 745, Subpart F

[Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, 40 C.F.R. §§ 745.100-745.119], 40 C.F.R. Part 745, Subpart E [Residential Property Renovation, 40 C.F.R. §§ 745.80-745.92], and 40 C.F.R. Part 745, Subpart L [Lead-Based Paint Activities, 40 C.F.R. §§ 745.220-745.239]. Respondent is also hereby notified that Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Sections 15 or 409 are subject to the assessment by Complainant of civil and/or criminal penalties.

I. STATUTORY AND REGULATORY AUTHORITY

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 ensuring that the existence of lead-based paint hazards be taken into account in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692.

4. In 1996, EPA promulgated regulations to implement Section 1018 of the Act *[Disclosure of Information Concerning Lead upon Transfer of Residential Property]*, 42 U.S.C. § 4852d, and Section 402(a) of TSCA *[Lead-Based Paint Activities Training and Certification –*

Regulations], 15 U.S.C. § 2682(a). The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), and the regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L (commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule”). In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA [*Lead Hazard Information Pamphlet – Renovation of Target Housing*], 15 U.S.C. § 2686(b), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E (commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule”).

5. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L (collectively, the PRE Rule and the LBP Activities Rule are referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”).

6. The Disclosure Rule, in pertinent part, requires lessors of target housing to do the following before a lessee is obligated under a lease contract:

- i. Provide to lessees an EPA–approved lead hazard information pamphlet;
- ii. Ensure that the contract to lease includes a Lead Warning Statement;
- iii. Ensure that the contract to lease includes a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof; and,

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Garden Homes Management Corporation, TSCA-01-2014-0042

- iv. Ensure that the contract to lease includes a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available.

See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), and 745.113(b)(1)-(3).

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 any requirements of the Disclosure Rule is a violation of TSCA Section 409, 15 U.S.C. § 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of TSCA Section 409, specific civil penalties apply under TSCA Section 16.

8. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and maintenance of records.

9. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), 40 C.F.R. § 745.103, and 40 C.F.R. § 745.83, the housing stock addressed by the Act, the Disclosure Rule, and the RRP Rule is “target housing,” 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,” as defined at 40 C.F.R. § 745.103.

10. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17)

and 40 C.F.R. § 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.

11. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), 40 C.F.R. § 745.103, and 40 C.F.R. § 745.83, the term “residential dwelling” means either a single-family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

12. For purposes of complying with the Act and the Disclosure Rule, pursuant to 40 C.F.R. § 745.107(a)(1), the term “pamphlet” as used herein means the EPA-approved lead hazard information pamphlet developed under Section 406(a) of TSCA, entitled “*Protect Your Family From Lead in Your Home*” (EPA # 747-K-94-001), or an equivalent pamphlet that has been approved for use in the State of Connecticut.

13. For purposes of complying with Section 406(b) of TSCA and the RRP Rule, pursuant to 40 C.F.R. § 745.83, the term “pamphlet” as used herein means the EPA-approved pamphlet developed under TSCA Section 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” (EPA # 740-K-10-001), or any State or Tribal pamphlet developed for the same purpose and approved by EPA under 40 C.F.R. § 745.326.

14. Pursuant to 40 C.F.R. § 745.83, the term “firm” means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business

entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

15. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an “abatement,” as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceiling, plumbing, windows); weatherization projects (e.g. cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

16. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

17. Pursuant to 40 C.F.R. § 745.83, the term “renovator” means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator

who has successfully completed a renovator course accredited by EPA or by an EPA-authorized State or Tribal program.

18. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this Complaint, firms performing renovations in target housing are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;
- ii. Provide the EPA-approved pamphlet to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- iii. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation; and,
- iv. Retain all records necessary to demonstrate compliance with the same.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a)(2), 745.89(d)(1)-(2), and 745.86(a) and (b).

19. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the Disclosure Rule or the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA.

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

penalty.

21. Section 16(a) of TSCA, Section 1018(b)(5) of the Act, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of \$10,000 per day per violation of the Disclosure Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (“Debt Collection Improvement Act”), and 40 C.F.R. Part 19, violations that occurred after January 30, 1997 through January 12, 2009 are subject to civil penalties of up to \$11,000 per day per violation and violations that occurred after January 12, 2009 are subject to civil penalties of up to \$16,000 per day per violation. *See* 78 Fed. Reg. 66643, 66647 (November 6, 2013).

22. TSCA Section 16(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. § 745.235(e) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Under the Debt Collection Improvement Act and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009 are subject to penalties of up to \$32,500 per day per violation and violations that occurred after January 12, 2009 are subject to penalties of up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643, 66647.

II. GENERAL ALLEGATIONS

23. Respondent is a corporation organized, on or about July 23, 1970, under the laws of the State of Connecticut. Garden Homes operates as a real estate management and development company with its principal place of business located at 29 Knapp Street, Stamford, Connecticut.

24. Garden Homes owns and/or operates numerous residential properties in

Connecticut that qualify as target housing and contain, in total, approximately 960 residential dwelling units. At all times relevant to the RRP Rule violations alleged in this Complaint, Garden Homes utilized its own employees or agents to conduct renovation activities in the target housing Garden Homes owns or operates.

25. On or about April 8, 2004, EPA Region 1 issued a written Notice of Noncompliance (“NON”) to Garden Homes, based on a 2002 EPA compliance inspection and subsequent investigation into Respondent’s compliance status under the Act and the Disclosure Rule. In the NON, EPA cited Garden Homes with multiple violations of TSCA Section 409 and the Disclosure Rule. Respondent submitted to EPA a written response to the NON, on or about April 21, 2004.

26. On August 16, 2012, a duly-authorized EPA inspector conducted a compliance inspection at Respondent’s offices in Stamford, CT (the “2012 Inspection”). Such duly-authorized EPA inspector conducted another compliance inspection at Respondent’s Stamford offices on April 10, 2013 (the “2013 Inspection”).

27. Respondent’s Vice President, Diane Adamis, was present at, and participated in, both the 2012 Inspection and the 2013 Inspection. During the 2012 Inspection, Ms. Adamis indicated that she was unaware of the RRP Rule requirements pertaining to renovation activities in target housing.

28. At the time of the violations alleged in this Complaint, Respondent offered apartments for lease in, among others, the properties described in Paragraph 29, below.

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Accordingly, the Respondent is a “lessor” as defined in 40 C.F.R. § 745.103.

29. At all times relevant to the allegations in this Complaint, Respondent offered for lease apartments that were “residential dwellings,” as defined in 40 C.F.R. § 745.103 and were located in the following Garden Homes properties, each identified by the below-listed name, location, and year constructed:

	Property Name and Location	Year Built
1.	Beechmont Apartments – Bridgeport, CT	1961
2.	Flax Hill Apartments – South Norwalk, CT	1890
3.	Golden Hill Apartments – Milford, CT	1963
4.	Hillside Apartments – New Milford, CT	1969
5.	Horizon Homes – Naugatuck, CT	1977
6.	Maple Court Apartments – Stamford, CT	1965
7.	West Hill Apartments – Naugatuck, CT	1960
8.	Westwood Apartments – West Haven, CT	1973
9.	Willow Park Apartments – Danbury, CT	1974

30. All of the apartment units in the properties referenced in Paragraph 29 above that are identified in the violations alleged in this Complaint are or were, at the time of the alleged violations, target housing as defined in 40 C.F.R. § 745.103. Furthermore, none of those apartment units satisfies the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), the Disclosure Rule (including 40 C.F.R. § 745.101), or the RRP Rule (including 40 C.F.R. § 745.82).

31. At all times relevant to the RRP Rule violations alleged in this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 746.83.

32. At all times relevant to the RRP Rule violations alleged in this Complaint,

Respondent's employee, Vincent Buffolino, performed renovation activities at Unit 5-07 of West Hill Apartments that constituted a "renovation" within the meaning of 40 C.F.R. § 745.83.

33. The renovation activities performed by Respondent's employee, Vincent Buffolino, at Unit 5-07 of West Hill Apartments constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule.

III. VIOLATIONS

DISCLOSURE RULE VIOLATIONS

34. EPA has identified the below-listed violations of the Act and the Disclosure Rule based on documents and other information obtained from Garden Homes during or as a result of the 2012 Inspection, the 2013 Inspection, and EPA's investigation of the facts and circumstances underlying the violations.

FIRST COUNT

Failure to Provide Lead Hazard Information Pamphlet

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

36. 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 (*Protect Your Family From Lead in Your Home*) or an equivalent pamphlet that has been approved for use in particular states by EPA.

37. Respondent Garden Homes failed to provide each of the following tenants with an EPA-approved lead hazard information pamphlet before the tenants entered into a contract to

lease the specific apartments indicated, below:

- i. The lessees who became obligated to rent Beechmont Apartments, Unit 196-C, in Bridgeport, CT, on or about September 16, 2010;
- ii. The lessees who became obligated to rent Flax Hill Apartments, Unit 58, in South Norwalk, CT, on or about February 22, 2011;
- iii. The lessees who became obligated to rent Horizon Homes Apartments, Unit 48, in Naugatuck, CT, on or about April 28, 2011;
- iv. The lessees who became obligated to rent Horizon Homes Apartments, Unit 91, in Naugatuck, CT, on or about January 19, 2011;
- v. The lessee who became obligated to rent Horizon Homes Apartments, Unit 143, in Naugatuck, CT, on or about August 9, 2011;
- vi. The lessees who became obligated to rent Horizon Homes Apartments, Unit 214, in Naugatuck, CT, on or about April 24, 2011;
- vii. The lessee who became obligated to rent Maple Court Apartments, Unit 3-A, in Stamford, CT, on or about February 1, 2012;
- viii. The lessees who became obligated to rent West Hill Apartments, Unit 5-08, in Naugatuck, CT, on or about August 13, 2010;
- ix. The lessees who became obligated to rent Willow Park Apartments, Unit 3, in Danbury, CT, on or about October 6, 2011;
- x. The lessees who became obligated to rent Golden Hill Apartments, Unit 3-05, in Milford, CT, on or about October 9, 2012;
- xi. The lessees who became obligated to rent Hillside Apartments, Unit 09, in New Milford, CT, on or about October 27, 2012;
- xii. The lessees who became obligated to rent Horizon Homes, Unit 24, in Naugatuck, CT, on or about October 25, 2012;
- xiii. The lessee who became obligated to rent Horizon Homes, Unit 95, in Naugatuck, CT, on or about August 2, 2012;
- xiv. The lessees who became obligated to rent Horizon Homes, Unit 164, in Naugatuck, CT, on or about July 26, 2012;
- xv. The lessees who became obligated to rent Horizon Homes, Unit 197, in Naugatuck, CT, on or about November 20, 2012;
- xvi. The lessees who became obligated to rent Horizon Homes, Unit 258, in Naugatuck, CT, on or about July 24, 2012;

- xvii. The lessee who became obligated to rent Horizon Homes, Unit 281, in Naugatuck, CT, on or about November 8, 2012; and,
- xviii. The lessee who became obligated to rent Westwood Apartments, Unit 25-C, in West Haven, CT, on or about October 30, 2012.

38. Respondent Garden Homes' failure to provide lessees of target housing with an EPA-approved lead hazard information pamphlet prior to those lessees becoming obligated under a contract to lease target housing on at least eighteen (18) occasions constitutes at least eighteen (18) separate violations of 40 C.F.R. § 745.107(a)(1) and TSCA Section 409, 15 U.S.C. § 2689.

39. Each of the above-listed instances of violation alleged in this First Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and each is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and Section 16 of TSCA, 15 U.S.C. § 2615.

SECOND COUNT

Failure to Include Lead Warning Statement

40. Paragraphs 1 through 39, above, are incorporated by reference as if fully set forth herein.

41. Pursuant to 40 C.F.R. § 745.113(b)(1), a lessor must ensure that, before the lessee is obligated under any contract to lease target housing, each contract to lease target housing includes a Lead Warning Statement within, or as an attachment to, the contract.

42. Respondent Garden Homes failed to so include a Lead Warning Statement in, or attached to, its contracts with each of the lessees listed in Paragraph 37, above.

43. Respondent's failure to include a Lead Warning Statement in or attached to at least eighteen (18) lease contracts before the lessees became obligated to lease target housing constitutes at least eighteen (18) separate violations of 40 C.F.R. § 745.113(b)(1) and TSCA Section 409.

44. Each of the above-listed instances of violation alleged in this Second Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and each is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act and Section 16 of TSCA.

THIRD COUNT

Failure to Include Disclosure Statement Regarding Lead-Based Paint/Hazards

45. Paragraphs 1 through 44, above, are incorporated by reference as if fully set forth herein.

46. Pursuant to 40 C.F.R. § 745.113(b)(2), a lessor must ensure that, before the lessee is obligated under any contract to lease target housing, a contract to lease target housing includes as an attachment to 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 a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

47. Respondent Garden Homes failed to include, before lessees became obligated to lease the target housing, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or a statement indicating no knowledge of the same in, or attached to,

its contracts with each of the lessees listed in Paragraph 37, above.

48. Respondent's failure to include a statement 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 in, or attached to, at least eighteen (18) lease contracts constitutes at least eighteen (18) separate violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409.

49. Each of the above-listed instances of violation alleged in this Third Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and each is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act and Section 16 of TSCA.

FOURTH COUNT

Failure to Include Disclosure Regarding Records or Reports of Lead-Based Paint/Hazards

50. Paragraphs 1 through 49, above, are incorporated by reference as if fully set forth herein.

51. Pursuant to 40 C.F.R. § 745.113(b)(3), a lessor must ensure that, before the lessee is obligated under any contract to lease target housing, a contract to lease target housing includes as an attachment to or within the lease contract a list of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards in the housing being leased or, if no such records or reports are available, an indication of that.

52. Respondent Garden Homes failed to include, before lessees became obligated to lease the target housing, a list of available records or reports pertaining to lead-based paint and/or

lead-based paint hazards or an indication that no such records or reports are available in or attached to its contracts with each of the lessees listed in Paragraph 37, above.

53. Respondent's failure to include a list of records or reports, or a statement indicating none is available, in or attached to at least eighteen (18) lease contracts constitutes at least eighteen (18) separate violations of 40 C.F.R. § 745.113(b)(3), and TSCA Section 409.

54. Each of the above-listed instances of violation alleged in this Fourth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and each is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act and Section 16 of TSCA.

RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

55. EPA has identified the below-listed violations of TSCA and the RRP Rule based on documents and other information obtained from Garden Homes during or as a result of the 2012 Inspection, the 2013 Inspection, and EPA's investigation of the facts and circumstances underlying the violations.

FIFTH COUNT

Failure of Firm to Obtain Certification

56. Paragraphs 1 through 55, above, are incorporated by reference as if fully set forth herein.

57. Pursuant to 40 C.F.R. § 745.81(a)(2), on and after April 22, 2010, no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under

40 C.F.R. § 745.82.

58. On or after December 31, 2012, Garden Homes' employee, Vincent Buffolino, conducted repair work inside Respondent's rental unit located at West Hills Apartments, Unit 5-07, in Naugatuck, Connecticut (the "West Hills Renovation"). The work disturbed over six (6) square feet of painted surface and involved the removal of a heating panel. The West Hills Renovation did not qualify as minor maintenance and repair activities under 40 C.F.R. § 745.83, nor was it exempt under 40 C.F.R. § 745.82.

59. As of the date of filing this Complaint, Respondent had not obtained initial EPA-certification as a firm under 40 C.F.R. § 745.89(a).

60. At no time before or during the West Hills Renovation was Respondent certified as a firm under 40 C.F.R. § 745.89.

61. Respondent's performance of the West Hills Renovation without being certified as a firm under 40 C.F.R. § 745.89 constitutes a violation of the RRP Rule, at 40 C.F.R. § 745.81(a)(2), and TSCA Section 409.

62. The above-listed violation alleged in this Fifth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a) and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

SIXTH COUNT

Failure to Provide Pre-Renovation Education Information

63. Paragraphs 1 through 62, above, are incorporated by reference as if fully set forth herein.

64. Pursuant to 40 C.F.R. § 745.84(a)(2), with respect to a rented residential dwelling unit in target housing, a firm must provide information in the form of an EPA pamphlet to a tenant or adult occupant no more than 60 days prior to performing renovation activities therein and, also, obtain a written acknowledgement of receipt or certificate of mailing such pamphlet, in the manner specified at 40 C.F.R. §§ 745.84(a)(2)(i) or (a)(2)(ii).

65. Respondent failed to provide an EPA-approved pamphlet to the tenant or adult occupant before commencing the West Hills Renovation.

66. Respondent's failure to distribute a pamphlet to the tenant or adult occupant of the dwelling unit in which the West Hills Renovation was performed constitutes a violation of 40 C.F.R. § 745.84(a)(2) and Section 409 of TSCA.

67. The above-listed violation alleged in this Sixth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87 and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

SEVENTH COUNT

Failure to Ensure Certified Renovator Performs or Directs Work

68. Paragraphs 1 through 67, above, are incorporated by reference as if fully set forth herein.

69. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations in target housing must ensure that all individuals who perform renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must ensure that a certified

renovator is assigned to each renovation and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

70. At no time before or during the West Hills Renovation was the person performing the renovation activities either a certified renovator or trained by a certified renovator, nor was a certified renovator assigned to the West Hills Renovation, as specified under 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

71. Respondent's failure to ensure that the individual performing renovation activities at the West Hills Renovation was either a certified renovator or trained by a certified renovator and Respondent's failure to ensure that a certified renovator was assigned to the West Hill Renovation to carry out all of the responsibilities in 40 C.F.R. § 745.90 constituted violations of 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

72. Each of the above-listed violations alleged in this Seventh Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87 and each is a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

EIGHTH COUNT
Failure to Retain Compliance Records

73. Paragraphs 1 through 72, above, are incorporated by reference as if fully set forth herein.

74. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations in target housing must retain for a period of at least three (3) years following completion of a renovation all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E. The records to

be retained include, in pertinent part, written proof of receipt or delivery of pre-renovation education information (the pamphlet) pursuant to 40 C.F.R. § 745.86(b)(2)-(4), as well as documentation of compliance with work practice standards and certified renovator requirements pursuant to 40 C.F.R. § 745.86(b)(6).

75. With regard to the West Hills Renovation, Respondent failed to retain all records necessary to demonstrate compliance with the RRP Rule and such failure constituted a violation of 40 C.F.R. §§ 745.86(a) and (b).

76. The above-listed violation alleged in this Eighth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87 and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

PROPOSED PENALTY

77. Section 1018(b)(5) of the Act, 42 U.S.C. § 4825d(b)(5), and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation under Section 16 of TSCA shall be no more than \$10,000. Pursuant to the Debt Collection Improvement Act and 40 C.F.R. Part 19, the maximum penalty shall be no more than \$16,000 for each such violation occurring after January 12, 2009.

78. Section 409 of TSCA and 40 C.F.R. § 745.87 provide that, for purposes of enforcing the RRP Rule under TSCA, the penalty for each violation under Section 16 of TSCA shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act and 40 C.F.R. Part 19, the maximum penalty shall be no more than \$37,500 for each such violation

occurring after January 12, 2009.

79. In determining the amount of any penalty to be assessed, Section 16(a) of TSCA requires EPA to consider the nature, circumstances, extent and gravity of the 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. *See* 15 U.S.C. § 2615(a)(2)(B). To assess a penalty for the violations alleged herein, Complainant will take into account the particular facts and circumstances of this case with specific reference to the following EPA policy documents: (i) for Disclosure Rule violations, the December 2007 *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* (“Disclosure Penalty Policy”); and (ii) for RRP Rule violations, the August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“RRP Penalty Policy”). Copies of the Disclosure Penalty Policy and the RRP Penalty Policy (collectively, “Penalty Policies”), are enclosed with this Complaint. The Penalty Policies provide a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases.

80. By this Complaint, Complainant seeks to assess civil penalties of up to the statutory maximum per violation against the Respondent for the following violations and any other violations documented by EPA as a result of the 2012 Inspection, the 2013 Inspection, and/or the subsequent EPA investigation of this matter:

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- i. FIRST COUNT: At least eighteen (18) separate violations of 40 C.F.R. § 745.107(a)(1) for failure to provide an EPA-approved lead hazard information pamphlet – A lessor’s failure to provide an EPA-approved lead hazard information pamphlet before a tenant is obligated under the lease has a high probability of impairing a 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 when leasing target housing. The pamphlet describes the hazards associated with lead-based paint and provides information about how lessees can protect themselves against potential lead exposure. The pamphlet also explains that lead exposure is especially harmful to young children and pregnant women.

- ii. SECOND COUNT: At least eighteen (18) separate violations of 40 C.F.R. § 745.113(b)(1) for failure to provide a Lead Warning Statement – A lessor’s failure to include a Lead Warning Statement in or attached to a lease contract before a tenant is obligated under the lease has 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. The Lead Warning Statement explains that lead exposure is especially harmful to young children and pregnant women.

- iii. THIRD COUNT: At least eighteen (18) separate violations of 40 C.F.R. § 745.113(b)(2) for failure to provide a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards – A lessor’s failure to include a statement disclosing knowledge of lead-based paint and/or lead-based paint hazards (or indicating no knowledge thereof) before a tenant is obligated under the lease has a medium probability of impairing a lessee’s ability to properly assess the risks associated with leasing target housing. The intent of this provision is to put potential lessees on notice of specific information (or lack thereof) relating to the presence of lead in housing. Violations of this provision deprive lessees of their ability to make decisions based upon risk and, without this statement, a lessee may unwittingly lease a unit that contains lead-based paint.

- iv. FOURTH COUNT: At least eighteen (18) separate violations of 40 C.F.R. § 745.113(b)(3) for failure to include a list of records and reports (or to indicate the lack thereof) regarding lead-based paint and/or lead-based paint hazards – A lessor’s failure to include within or attached to a lease contract a list of available records and reports pertaining to lead-based paint and/or lead-based paint hazards in rental housing (or to indicate no such records or reports are available) before a tenant is obligated under the lease has a low probability of impairing the lessee’s ability to

properly assess and weigh the potential health risks associated with leasing target housing and of increasing the likelihood of exposure to lead-based paint hazards.

- v. FIFTH COUNT: At least one (1) violation of 40 C.F.R. § 745.81(a)(2) for performing renovation activities without EPA certification as a firm – The RRP Rule requirements are intended to prevent exposure to lead during renovations. A lessor/firm’s failure obtain initial EPA certification prior to offering or performing renovations in target housing has a medium probability of impacting human health and the environment through, for example, failure to use best work practices, failure to convey to tenants the risks associated with renovations, and failure to have adequate knowledge for meeting all RRP Rule obligations.
- vi. SIXTH COUNT: At least one (1) violation of 40 C.F.R. § 745.84(a)(2) for failure to provide pre-renovation education information (EPA-approved pamphlet) – A lessor/firm’s failure to provide an EPA-approved lead hazard information pamphlet to a lessee or adult occupant prior to renovating has a high probability of impacting human health and the environment. Without receiving a pamphlet, it is highly probable that the tenant’s ability to properly assess information about the risks of exposure to lead-based paint and to weigh this information with regard to renovations in the target housing will be impaired. The pamphlet describes the hazards associated with lead-based paint and provides information about how lessees can protect themselves against potential lead exposure. The pamphlet also explains that lead exposure is especially harmful to young children and pregnant women, and explains how lessees can protect themselves during and after any renovations.
- vii. SEVENTH COUNT: At least one (1) violation of 40 C.F.R. §§ 745.89(d)(1) and (d)(2) for failure to use certified renovators – A lessor/firm’s failure to assign and use certified renovators for renovation activities performed in target housing has a medium probability of impacting human health and the environment. The failure to assign and use certified renovators to discharge all renovator duties under the RRP Rule presents a medium probability that renovators will not, for example, use best renovation practices and EPA-approved methods during the work and, thereby, will increase the chances of a lessee’s or other occupant’s exposure to lead during and/or after the renovation.
- viii. EIGHTH COUNT: At least one (1) violation of 40 C.F.R. §§ 745.86(a) and (b) for failure to retain records – A lessor/firm’s failure to make and retain all records demonstrating compliance with requirements for renovations performed in target housing has a low probability of impacting human health and the environment.

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81. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty amount for all of the violations alleged in this proceeding and explaining how the amount was calculated, as required by the Consolidated Rules of Practice. Complainant will calculate a proposed penalty based, in part, on its current knowledge of the Respondent' financial condition. The proposed penalty may be adjusted if Respondent establishes *bona fide* issues or defenses relevant to the appropriate amount of the penalty. 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 the check the docket number of this Complaint (EPA Docket No. TSCA-01-2014-0042). The check shall be forwarded to:

U.S. Environmental Protection Agency
Fines and Penalties
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:

Wanda I. 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

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

82. Neither the assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

83. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, 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 into a written Answer. **Respondent must file the original and one copy of the written Answer to this Complaint within thirty (30) days of receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

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

Respondent shall serve copies of the Answer, and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

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: (i) the circumstances or arguments alleged to constitute the grounds of any defense; (ii) the facts Respondent disputes; (iii) the basis for opposing any proposed relief; and, (iv) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, 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. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

V. DEFAULT ORDER

84. 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(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VI. SETTLEMENT CONFERENCE

85. 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 1.

86. 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 but that the deadline by which Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. To explore the possibility of settlement in this matter, Respondent should contact Hugh W. Martinez, Senior Enforcement Counsel, at the address provided above, or by calling him at (617) 918-1867 (direct). Mr. Martinez has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.



Joanna B. Jerison, Manager
Regulatory Legal Enforcement Office
Office of Environmental Stewardship
EPA Region 1 – New England

Date: 9/22/14

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CERTIFICATE OF SERVICE

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


Original and one copy,
hand-delivered to:

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

One copy (with the Part 22 Rules
and Penalty Policies enclosed),
by First Class Mail, Return
Receipt Requested to:

Richard Freedman, President
Garden Homes Management Corporation
29 Knapp Street
Stamford, Connecticut 06902

Dated: 9-23-14



Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912
Phone: (617) 918-1867
Fax: (617) 918-0867
E-mail: martinez.hugh@epa.gov