



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

SEP 27 2012

EPA ORC
Office of Regional Hearing Clerk

BY HAND

September 27, 2012

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

RE In the Matter of Allen Enterprises Rental Properties, et al.
Docket Number TSCA-01-2012-0110

Dear Ms. Rivera:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Complaint and Notice of Opportunity for Hearing and Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter DeCambre".

Peter DeCambre
Senior Enforcement Counsel

cc: Richard Allen

EPA DOCKET NO. TSCA-01-2012-0110
In Re: Allen Enterprises Rental Properties et. al.

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

Allen Enterprises Rental Properties
699 Union Avenue
Laconia, NH 03246

Open Arms Outreach, Inc.
756 Union Avenue
Laconia, NH 03246

Lakeport Plaza, LLC
699 Union Avenue
Laconia, NH 03246

Alice E. Allen 2002 Trust
163 Meredith Center Road
Meredith, NH 03253

Dated: _____

9/27/12



Peter DeCambre
Senior Enforcement Counsel
U.S. Environmental Protection Agency,
Region 1
5 Post Office Square, Suite 100 (OES 4-1)
Boston, Massachusetts 02109 - 3912
Tel (617) 918-1890
Electronic Fax (617) 918-0890



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

SEP 27 2012

EPA ORC
Office of Regional Hearing Clerk

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

September 27, 2012

Allen Enterprises Rental Properties
c/o Richard Allen
699 Union Avenue
Laconia, NH 03246

Open Arms Outreach, Inc.
756 Union Avenue
Laconia, NH 03246

Lakeport Plaza, LLC
699 Union Avenue
Laconia, NH 03246

Alice E. Allen 2002 Trust
163 Meredith Center Road
Meredith, NH 03253

RE In the Matter of Allen Enterprises Rental Properties, et al.
Docket Number TSCA-01-2012-0110

Dear Mr. Allen:

Enclosed is an administrative Complaint that the U.S. Environmental Protection Agency ("EPA") is issuing to Allen Enterprises Rental Properties (Allen Enterprises), Open Arms Outreach, Inc. (Open Arms), Lakeport Plaza, LLC (Lakeport) and Alice E. Allen 2002 Trust (Allen Trust) (collectively "Respondents") as a result of our determination that Respondents have 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 a total proposed civil penalty in the amount of one hundred eight thousand ten dollars (\$108,010). The total proposed penalty for Allen Enterprises and Open Arms is \$46,220. The total proposed penalty for Allen Enterprises and Lakeport is \$23,110. The total proposed penalty for Allen Enterprises and Allen Trust is \$38,680.

This enforcement action is based upon information collected during an EPA compliance inspection on July 21, 2011. 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 Respondents have the right to request a hearing regarding the violations alleged in the Complaint and the appropriateness of the proposed penalties. If you wish to request a hearing, you 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 you do not submit an Answer within the thirty day period, you may be found in default. Once in default, you will have waived your 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 you.

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

In addition, 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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

SEP 27 2012

EPA ORC
Office of Regional Hearing Clerk

IN THE MATTER OF:)

Allen Enterprises Rental Properties)
Open Arms Outreach, Inc.)
Lakeport Plaza, LLC)
Alice E. Allen 2002 Trust)
Laconia, NH)

Respondents.)

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

COMPLAINT AND NOTICE
OF OPPORTUNITY FOR
A HEARING

Docket Number
TSCA-01-2012-0110

**ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR A HEARING**

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits. The Complainant is the Legal Enforcement Manager, United States Environmental Protection Agency, Region 1.

II. NATURE OF THE ACTION

2. The Respondents in this action, Allen Enterprises Rental Properties, Open Arms Outreach, Inc., Lakeport Plaza, LLC, and Alice E. Allen 2002 Trust are hereby

notified of the Legal Enforcement Manager's determination that the Respondents have violated TSCA Section 409, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act 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. 75,340).

IV. GENERAL ALLEGATIONS

10. At all times relevant to this Complaint, Respondents owned and/or offered for lease 12 properties which contain 35 target housing units located in Laconia, New Hampshire.

11. Respondent Allen Enterprises Rental Properties (“Allen Enterprises”) is a domestic profit corporation organized under the laws of New Hampshire with a principal place of business located at 699 Union Avenue, Laconia, New Hampshire. Allen Enterprises manages and offers for lease residential real estate.

12. Respondent Open Arms Outreach, Inc. (“Open Arms”) is a non-profit corporation organized under the laws of New Hampshire with a principal place of business located at 756 Union Avenue, Laconia, New Hampshire. Open Arms owns and offers for lease residential real estate.

13. Respondent Lakeport Plaza, LLC (“Lakeport”) is a limited liability corporation organized under the laws of New Hampshire with a principal place of business located at 699 Union Avenue, Laconia, New Hampshire. Lakeport owns and offers for lease residential real estate.

14. Respondent Alice E. Allen 2002 Trust (“Allen Trust”) is a real estate trust with a principal place of business located at 163 Meredith Center Road, Meredith, New Hampshire. Allen Trust owns and offers for lease residential real estate.

15. At the time of the violations alleged in this Complaint, Allen Enterprises managed and offered for lease the properties listed below and described in Paragraphs 19 through 21 below. Allen Enterprises is thus a “lessor” as defined in 40 C.F.R. § 745.103.

Address	Owner/Lessor	Lessor
758 Union Avenue, Unit 3, Laconia, New Hampshire	Open Arms	Allen Enterprises
686 Union Avenue, Unit 3, Laconia, New Hampshire	Lakeport	Allen Enterprises
758 Union Avenue, Unit 1, Laconia, New Hampshire	Open Arms	Allen Enterprises
39 Batchelder Street, Laconia, New Hampshire	Allen Trust	Allen Enterprises

16. At the time of the violations alleged in this Complaint, Open Arms owned and offered for lease residential properties located at 758 Union Avenue, Unit 1 and Unit 3, Laconia, New Hampshire. Open Arms is thus an “owner” and “lessor” as defined in 40 C.F.R. § 745.103, of the housing located at 758 Union Avenue, Unit 1 and Unit 3, Laconia, New Hampshire and described in Paragraph 19 below.

17. At the time of the violations alleged in this Complaint, Lakeport owned and offered for lease a residential property located at 686 Union Avenue, Unit 3, Laconia, New Hampshire. Lakeport is thus an “owner” and “lessor” as defined in 40 C.F.R. § 745.103, of the housing located at 686 Union Avenue, Unit 3, Laconia, New Hampshire and described in Paragraph 20 below.

18. At the time of the violations alleged in this Complaint, Allen Trust owned and offered for lease a residential property located at 39 Batchelder Street, Laconia. Allen Trust is thus an “owner” and “lessor” as defined in 40 C.F.R. § 745.103, of the housing located at 39 Batchelder Street, Laconia, New Hampshire and described in Paragraph 21 below.

19. At the time of the violations alleged in this Complaint, Respondent Allen Enterprises and Open Arms offered for lease the following units of residential housing to the lessees listed below, on the dates set forth below:

- a. On June 7, 2011, a lessee began a tenancy-at-will at 758 Union Avenue, Unit 3, Laconia, NH. One child was resident; and
- b. On September 3, 2010, a lessee signed a lease agreement at 758 Union Avenue, Unit 1, Laconia, NH. One child was resident.

20. At the time of the violations alleged in this Complaint, Respondent Allen Enterprises and Lakeport offered for lease the following unit of residential housing to the lessee listed below, on the date set forth below:

On July 16, 2011, a lessee began a tenancy-at-will at 686 Union Avenue, Unit 3, Laconia, NH. One child sixteen years old was resident.

21. At the time of the violations alleged in this Complaint, Respondent Allen Enterprises and Allen Trust offered for lease the following unit of residential housing to the lessee listed below, on the date set forth below:

On June 26, 2009, a lessee signed a lease agreement at 39 Batchelder Street, Laconia, NH. Two children ages two and five were resident.

22. The housing units listed in Paragraphs 15 through 21 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.

23. On July 21, 2011, EPA inspectors conducted an inspection at 699 Union Avenue, Laconia, New Hampshire, to evaluate Respondents’ compliance with the

Disclosure Rule. During the inspection, the EPA inspectors met with Richard Allen and informed Mr. Allen of Respondents' obligations under the Disclosure Rule.

V. VIOLATIONS

24. Based on Complainant's review of documentation contained in Respondents' files, information submitted to Complainant by Respondents 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.

25. Paragraphs 1 through 24 above are incorporated by reference as if fully set forth herein.

26. 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.

27. Respondents Allen Enterprises and Open Arms 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 June 7, 2011, a lessee began a tenancy-at-will at 758 Union Avenue, Unit 3, Laconia, NH. One child was resident.
- b. On September 3, 2010, a lessee signed a lease agreement at 758 Union Avenue, Unit 1, Laconia, NH. One child was resident.

28. Respondents Allen Enterprises and Lakeport failed to provide the following lessee with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease target housing:

On July 16, 2011, a lessee began a tenancy-at-will at 686 Union Avenue, Unit 3, Laconia, NH. One child sixteen years old was resident.

29. Respondents Allen Enterprises and Allen Trust failed to provide the following lessee with an EPA-approved lead hazard information pamphlet before the lessee became obligated under a contract to lease target housing:

On June 26, 2009, a lessee signed a lease agreement at 39 Batchelder Street, Laconia, NH. Two children ages two and five were resident.

30. Respondents Allen Enterprises and Open Arms's failure to provide the lessees of target housing listed in paragraph 27 above with an EPA-approved lead hazard information pamphlet prior to the lessees being obligated to lease target housing constitutes two (2) violations of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409, 15 U.S.C. § 2689.

31. Respondents Allen Enterprises and Lakeport's failure to provide the lessee of target housing listed in paragraph 28 above with an EPA-approved lead hazard information pamphlet prior to the lessee being obligated to lease target housing constitutes one (1) violation of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409, 15 U.S.C. § 2689.

32. Respondents Allen Enterprises and Allen Trust's failure to provide the lessee of target housing listed in paragraph 29 above with an EPA-approved lead hazard information pamphlet prior to the lessee being obligated to lease target housing

constitutes one (1) violation 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.

33. Paragraphs 1 through 32 above are incorporated by reference as if fully set forth herein.

34. 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.

35. Respondents Allen Enterprises and Open Arms failed to include as an attachment, or within the following contracts to lease target housing, the Lead Warning Statement:

- a. On June 7, 2011, a lessee began a tenancy-at-will at 758 Union Avenue, Unit 3, Laconia, NH. One child was resident.
- b. On September 3, 2010, a lessee signed a lease agreement at 758 Union Avenue, Unit 1, Laconia, NH. One child was resident.

36. Respondents Allen Enterprises and Lakeport failed to include as an attachment, or within the following contract to lease target housing, the Lead Warning Statement:

On July 16, 2011, a lessee began a tenancy-at-will at 686 Union Avenue, Unit 3, Laconia, NH. One child sixteen years old was resident.

37. Respondents Allen Enterprises and Allen Trust failed to include as an attachment, or within the following contract to lease target housing, the Lead Warning Statement:

On June 26, 2009, a lessee signed a lease agreement at 39 Batchelder Street, Laconia, NH. Two children ages two and five were resident.

38. Respondents Allen Enterprises and Open Arms's failure to include the Lead Warning Statement as an attachment or within the contracts to lease the target housing units listed in paragraph 35 above constitutes two (2) violations of 40 C.F.R. § 745.113(b)(1), and TSCA Section 409, 15 U.S.C. § 2689.

39. Respondents Allen Enterprises and Lakeport's failure to include the Lead Warning Statement as an attachment or within the contract to lease the target housing units listed in paragraph 36 above constitutes one (1) violation of 40 C.F.R. § 745.113(b)(1), and TSCA Section 409, 15 U.S.C. § 2689.

40. Respondents Allen Enterprises and Allen Trust's failure to include the Lead Warning Statement as an attachment or within the contract to lease the target housing units listed in paragraph 37 above constitutes one (1) violation 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.

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

42. 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.

43. Respondents Allen Enterprises and Open Arms 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 June 7, 2011, a lessee began a tenancy-at-will at 758 Union Avenue, Unit 3, Laconia, NH. One child was resident.
- b. On September 3, 2010, a lessee signed a lease agreement at 758 Union Avenue, Unit 1, Laconia, NH. One child was resident.

44. Respondents Allen Enterprises and Lakeport failed to include, as an attachment or within the lease contract with the following lessee, 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:

On July 16, 2011, a lessee began a tenancy-at-will at 686 Union Avenue, Unit 3, Laconia, NH. One child sixteen years old was resident.

45. Respondents Allen Enterprises and Allen Trust failed to include, as an attachment or within the lease contract with the following lessee, 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:

On June 26, 2009, a lessee signed a lease agreement at 39 Batchelder Street, Laconia, NH. Two children ages two and five were resident.

46. Respondents Allen Enterprises and Open Arms's failure to include as an attachment or within the lease contracts listed in paragraph 43 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 two (2) violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

47. Respondents Allen Enterprises and Lakeport's failure to include as an attachment or within the lease contract listed in paragraph 44 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 one (1) violation of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

48. Respondents Allen Enterprises and Allen Trust's failure to include as an attachment or within the lease contract listed in paragraph 45 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 one (1) violation 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.

49. Paragraphs 1 through 48 above are incorporated by reference as if fully set forth herein.

50. 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.

51. Respondents Allen Enterprises and Open Arms 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 June 7, 2011, a lessee began a tenancy-at-will at 758 Union Avenue, Unit 3, Laconia, NH. One child was resident.
- b. On September 3, 2010, a lessee signed a lease agreement at 758 Union Avenue, Unit 1, Laconia, NH. One child was resident.

52. Respondents Allen Enterprises and Lakeport failed to include as an attachment or within the following lease contract, 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:

On July 16, 2011, a lessee began a tenancy-at-will at 686 Union Avenue, Unit 3, Laconia, NH. One child sixteen years old was resident.

53. Respondents Allen Enterprises and Allen Trust failed to include as an attachment or within the following lease contract, 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:

On June 26, 2009, a lessee signed a lease agreement at 39 Batchelder Street, Laconia, NH. Two children ages two and five were resident.

54. Respondents Allen Enterprises and Open Arms's failure to include, as an attachment or within the lease contracts listed in Paragraph 51 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 two (2) violations of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

55. Respondents Allen Enterprises and Lakeport's failure to include, as an attachment or within the lease contract listed in Paragraph 52 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 one (1) violation of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

56. Respondents Allen Enterprises and Allen Trust's failure to include, as an attachment or within the lease contracts listed in Paragraph 53 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 one (1) violation of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

VI. PROPOSED PENALTY

57. 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. 75,340 (December 11, 2008).

58. 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.

59. The total proposed penalty for Allen Enterprises and Open Arms is \$46,220. The summary and breakdown of the provisions violated and the corresponding penalties for Allen Enterprises and Open Arms are as follows and are further explained in Attachment 1 to the Complaint.

Property	Count I – Failure to provide lessees with an EPA-approved lead hazard information pamphlet 40 C.F.R. § 745.107(a)(1)	Count II – Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement 40 C.F.R. § 745.113(b)(1)	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 40 C.F.R. § 745.113(b)(2)	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 40 C.F.R. § 745.113(b)(3)
758 Union Avenue, Unit 3, Laconia, NH	\$ 8,500	\$ 7,090	\$ 5,670	\$1,850
758 Union Avenue, Unit 1, Laconia, NH	\$ 8,500	\$ 7,090	\$ 5,670	\$1,850

60. The total proposed penalty for Allen Enterprises and Lakeport is \$23,110.

The summary and breakdown of the provisions violated and the corresponding penalties for Allen Enterprises and Lakeport are as follows and are further explained in Attachment 1 to the Complaint.

Property	Count I – Failure to provide lessees with an EPA-approved lead hazard information pamphlet 40 C.F.R. § 745.107(a)(1)	Count II – Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement 40 C.F.R. § 745.113(b)(1)	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 40 C.F.R. § 745.113(b)(2)	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 40 C.F.R. § 745.113(b)(3)
686 Union Avenue, Unit 3, Laconia, NH	\$ 8,500	\$ 7,090	\$ 5,670	\$1,850

61. The total proposed penalty for Allen Enterprises and Allen Trust is \$38,680.

The summary and breakdown of the provisions violated and the corresponding penalties for Allen Enterprises and Allen Trust are as follows and are further explained in Attachment 1 to the Complaint.

Property	Count I – Failure to provide lessees with an EPA-approved lead hazard information pamphlet 40 C.F.R. § 745.107(a)(1)	Count II – Failure to include as an attachment, or within the contract to lease target housing, the Lead Warning Statement 40 C.F.R. § 745.113(b)(1)	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 40 C.F.R. § 745.113(b)(2)	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 40 C.F.R. § 745.113(b)(3)
39 Batchelder Street, Laconia, NH	\$16,000	\$11,340	\$8,500	\$2,840

62. Respondents 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-01-2012-0110. 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.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

63. 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, Respondents have 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, Respondents 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 Respondents intend to place at issue; and, (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondents to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

VIII. DEFAULT ORDER

64. If Respondents fail to file a timely answer to the Complaint, Respondents may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents' 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 Respondents without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c).

IX. SETTLEMENT CONFERENCE

65. Whether or not a hearing is requested upon filing an answer, Respondents may confer informally with the EPA concerning the alleged violations. Such conference provides Respondents 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 Respondents' right to a hearing on any issues of law, fact, or discretion included in the Agreement.

66. 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, Respondents 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.

67. 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

9/27/12
Date

ATTACHMENT 1

In the Matter of Allen Enterprises Rental Properties, et al. Docket Number TSCA-01-2012-0110

PROPOSED PENALTY SUMMARY

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), EPA proposes a total civil penalty in the amount of one hundred eight thousand ten dollars (\$108,010). The total proposed penalty for Allen Enterprises Rental Properties (Allen Enterprises) and Open Arms Outreach, Inc. (Open Arms) is \$46,220. The total proposed penalty for Allen Enterprises and Lakeport Plaza, LLC (Lakeport) is \$23,110. The total proposed penalty for Allen Enterprises and Alice E. Allen 2002 Trust (Allen Trust) is \$38,680. The rationale for the penalties is explained below.

Count I - 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 ERPP Appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERPP 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. Where the age of the youngest individual is not known, EPA may use a significant extent factor.

Respondents Allen Enterprises and Open Arms failed to provide an EPA-approved lead hazard information pamphlet to the lessees at the following addresses:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
758 Union Avenue, Unit 3, Laconia, NH	June 7, 2011	One child, age unknown	Significant	\$8,500
758 Union Avenue, Unit 1, Laconia, NH	September 3, 2010	One child, age unknown	Significant	\$8,500
				Total = \$17,500

Respondents Allen Enterprises and Lakeport failed to provide an EPA-approved lead hazard information pamphlet to the lessee at the following address:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
686 Union Avenue, Unit 3, Laconia, NH	July 16, 2011	One child sixteen years old	Significant	\$8,500
				Total = \$8,500

Respondents Allen Enterprises and Allen Trust failed to provide an EPA-approved lead hazard information pamphlet to the lessee at the following address:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
39 Batchelder Street, Laconia, NH	June 26, 2009	Two children, less than 6 years old	Major	\$16,000
				Total = \$16,000

Count II - 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 in 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 ERPP Appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

Extent of Harm: The Disclosure Rule ERPP 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. Where the age of the youngest individual is not known, EPA may use a significant extent factor.

Respondents Allen Enterprises and Open Arms failed to include the Lead Warning Statement in or attached to lease agreements regarding the following lease transactions:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
758 Union Avenue, Unit 3, Laconia, NH	June 7, 2011	One child, age unknown	Significant	\$7,090
758 Union Avenue, Unit 1, Laconia, NH	September 3, 2010	One child, age unknown	Significant	\$7,090
				Total = \$14,180

Respondents Allen Enterprises and Lakeport failed to include the Lead Warning Statement in or attached to lease agreement regarding the following lease transaction:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
686 Union Avenue, Unit 3, Laconia, NH	July 16, 2011	One child sixteen years old	Significant	\$7,090
				Total = \$7,090

Respondents Allen Enterprises and Allen Trust failed to include the Lead Warning Statement in or attached to lease agreement regarding the following lease transaction:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
39 Batchelder Street, Laconia, NH	June 26, 2009	Two children, less than 6 years old	Major	\$11,340
				Total = \$11,340

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 hazards, or lack of knowledge thereof.

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 ERPP Appendix B, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

Extent of Harm: The Disclosure Rule ERPP 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. Where the age of the youngest individual is not known, EPA may use a significant extent factor.

Respondents Allen Enterprises and Open Arms failed to include in the following leases, or as an attachment thereto, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
758 Union Avenue, Unit 3, Laconia, NH	June 7, 2011	One child, age unknown	Significant	\$5,670
758 Union Avenue, Unit 1, Laconia, NH	September 3, 2010	One child, age unknown	Significant	\$5,670
				Total = \$11,340

Respondents Allen Enterprises and Lakeport failed to include in the following lease, or as an attachment thereto, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
686 Union Avenue, Unit 3, Laconia, NH	July 16, 2011	One child sixteen years old	Significant	\$5,670
				Total = \$5,670

Respondents Allen Enterprises and Allen Trust failed to include in the following lease, or as an attachment thereto, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
39 Batchelder Street, Laconia, NH	June 26, 2009	Two children, less than 6 years old	Major	\$8,500
				Total = \$8,500

Count IV– 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. Where the age of the youngest individual is not known, EPA may use a significant extent factor.

Respondents Allen Enterprises and Open Arms failed to include in the following leases, or as an attachment thereto, a list of any records that pertain to lead hazards or to indicate that no such list exists:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
758 Union Avenue, Unit 3, Laconia, NH	June 7, 2011	One child, age unknown	Significant	\$1,850
758 Union Avenue, Unit 1, Laconia, NH	September 3, 2010	One child, age unknown	Significant	\$1,850
				Total = \$3,700

Respondents Allen Enterprises and Lakeport failed to include in the following lease, or as an attachment thereto, a list of any records that pertain to lead hazards or to indicate that no such list exists:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
686 Union Avenue, Unit 3, Laconia, NH	July 16, 2011	One child sixteen years old	Significant	\$1,850
				Total = \$1,850

Respondents Allen Enterprises and Allen Trust failed to include in the following lease, or as an attachment thereto, a list of any records that pertain to lead hazards or to indicate that no such list exists:

Address	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
39 Batchelder Street, Laconia, NH	June 26, 2009	Two children, less than 6 years old	Major	\$2,840
				Total = \$2,840