



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II

2009 AUG 11 PM 3:19

REGIONAL HEARING  
CLERK

FACSIMILE TRANSMISSION,  
718-599-1322,  
FIRST CLASS MAIL, and  
CERTIFIED MAIL, 7005 3110 0000 5932 2017,  
RETURN RECEIPT REQUESTED

August 7, 2009

Mr. Wolfe Landau  
142 Middleton Street, #2  
Brooklyn, New York 11206-8406

Re: *In re Wolfe Landau*  
Docket No. TSCA-02-2009-9267

Dear Mr. Landau:

I am writing in reference to the above noted administrative proceeding. Earlier this year, in May, a "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING" (complaint), dated March 30, 2009, was served upon you. I am including with this letter a copy of the affidavit attesting that the complaint was served upon you. This complaint was issued under the authority of Section 16(a)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a)(1). The complaint sets forth 11 separate counts, each alleging violations of the regulations governing the disclosure of known lead-based paint and/or lead based paint hazards upon sale or lease of residential property, 40 C.F.R. Part 745.113. The complaint seeks a total penalty of \$46,210. Included along with the complaint was a copy of the rules of procedure governing this proceeding, 40 C.F.R. Part 22 (denominated the "Consolidated Rules of Practice"; hereafter Part 22).

Pursuant to 40 C.F.R. § 22.15, where a respondent contests any material fact upon which the complaint is based, asserts that the proposed penalty is inappropriate and/or seeks judgment as a matter of law, it shall file an answer to the complaint (an original version and one copy) with the Regional Hearing Clerk of the EPA region that issued the complaint, and such an answer "must be filed with the Regional Hearing Clerk within 30 days after service of the complaint." 40 C.F.R. § 22.15(a). The complaint specifically informed you of this requirement as well. See page 21, Section "A," "Answering The Complaint."

More than 30 days have passed since service of the complaint. I therefore hereby put you on notice that you are in default for having failed timely to file an answer to the complaint. As was noted therein on pages 22 and 23, Section "C," 40 C.F.R. § 22.17 governs default situations. In sub-section "a" of that regulatory provision, it states that "[a] party may be found to be in default: after motion, upon failure to file a timely answer to the complaint[.]" The legal effects of such default are also specified in 40 C.F.R. § 22.17(a):

Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual obligations.

(Definitions of operative terms used in these rules are found in 40 C.F.R. § 22.3.)

The consequences of an order declaring a respondent in default are set forth in 40 C.F.R. § 22.17(c), which states in part:

When the Presiding Officer finds that a default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.

A default order might include the requirement that respondent pay a penalty: "Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c)." 40 C.F.R. § 22.17(d).

Unless an answer is filed (as that term is defined in 40 C.F.R. § 22.5(a)(1)) with the Regional Hearing Clerk of EPA, Region 2, by (and no later than) August 31, 2009, I will recommend that a motion for default pursuant to 40 C.F.R. § 22.17(b) be filed against you, and further that such motion seek the full amount of the penalty proposed in the complaint, \$46,210.

If you wish to contact me, my phone number is 212-637-3222; my fax number is 212-637-3199.

Nothing in this letter is intended or is to be construed to prejudice, limit or otherwise affect any right or remedy available to the EPA (or to the United States acting on behalf of EPA) against you under any applicable provision of TSCA and/or 40 C.F.R. Part 745.113 with regard to matters alleged in the complaint, any matters pertaining to such allegations or otherwise arising therefrom, nor is anything herein intended or is to be

construed as otherwise affecting any right or remedy available to EPA (or to the United States acting on behalf of EPA) with regard to any other possible violations by you of the regulations governing the disclosure of known lead- based paint and/or lead based paint hazards upon sale or lease of residential property.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee A. Spielmann', with a long, sweeping horizontal flourish extending to the right.

Lee A. Spielmann  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosure (as noted above)

cc: Karen Maples, Regional Hearing Clerk, EPA, Region 2



**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 2

-----X

In the Matter of,

Docket No. tsca-02-2009-9267

WOLFE LANDAU

AFFIDAVIT OF SERVICE

Respondent.

Proceeding under Section 16(a) of  
Toxic Substances Control Act, 15 U.S.C.  
§ 2615(a),

-----X

STATE OF NEW YORK )  
S.S.  
COUNTY OF NEW YORK)

TIMOTHY M. BOTTI, being duly sworn, deposes and says that he is over the age of  
eighteen years, is employed by the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 13<sup>TH</sup> day of MAY, 2009, at approximately the time of 6:55 PM,  
deponent attempted to serve a true copy of the COMPLAINT WITH ATTACHMENT upon  
WOLFE LANDAU at 142 Middleton Street, #2, Brooklyn, New York, but there was no answer  
to the doorbell.

That on the 14<sup>TH</sup> day of MAY, 2009, at approximately the time of 6:00 PM,  
deponent attempted to serve a true copy of the COMPLAINT WITH ATTACHMENT upon  
WOLFE LANDAU at 142 Middleton Street, #2, Brooklyn, New York, but there was no answer  
to the doorbell.

That on the 15<sup>TH</sup> day of MAY, 2009, at approximately the time of 1:10 PM,  
deponent attempted to serve a true copy of the COMPLAINT WITH ATTACHMENT upon  
WOLFE LANDAU at 142 Middleton Street, #2, Brooklyn, New York, but there was no answer  
to the doorbell.

That on the 18<sup>TH</sup> day of MAY, 2009, at approximately the time of 8:00 PM,  
deponent attempted to serve a true copy of the COMPLAINT WITH ATTACHMENT upon  
WOLFE LANDAU at 142 Middleton Street, #2, Brooklyn, New York, but there was no answer  
to the doorbell.

D.L.S., Inc.  
401 Broadway  
Ste 510  
NY, NY 10013  
212-925-1220  
www.dlsny.com



## Demovsky Lawyer Service

Premier Nationwide Document Retrieval  
and Process Service Company

At that time, therefore, deponent served a true copy of the foregoing papers upon WOLFE LANDAU by firmly affixing same conspicuously on the front door at that address, a dark metal door of Apartment #2 the actual place of residence.

That on the 18<sup>TH</sup> day of MAY, 2009, deponent served another copy of the foregoing upon WOLFE LANDAU by first class mail, by enclosing a true copy thereof in a securely sealed and postpaid wrapper with the words "PERSONAL AND CONFIDENTIAL" written on the same envelope, and not indicating on the outside that it is from an attorney or concerns an action against the person to be served, and depositing the same into an official depository maintained by the Government of the United States, City and State of New York, addressed as follows:

WOLFE LANDAU  
142 MIDDLETON STREET, APT. #2  
BROOKLYN, NEW YORK 11206-8406

  
TIMOTHY M. BOTTI #843358

Sworn to before me this  
20<sup>TH</sup> day of MAY, 2009

  
NOTARY PUBLIC

JONATHAN T. RIPPS  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01R16109718  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MAY 17, 2012