UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Region 2

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In the Matter of	:
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Audubon Communities Management, LLC	:
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Respondent.	:
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Proceeding under Section 16(a) of	:
the Toxic Substances Control Act.	
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	x

Docket No. TSCA-02-2007-9168

<u>STATUS</u> REPORT PH 5:

STATUS REPORT

This Status Report is submitted pursuant to Judge Gunning's request on the May 13, 2008 Alternate Dispute Resolution (ADR) teleconference held with the parties in regard to the above referenced matter. The parties wish to thank Judge Gunning for her assistance in helping the parties work toward a settlement in this matter.

The following is a summary of the status of this matter:

On January 22, 2008 the parties agreed to participate in ADR negotiations to assist in settlement of this matter. Notwithstanding ADR, the parties have continued to engage in earnest and productive good-faith negotiations toward settlement of this matter. On January 29, 2008, the parties held an informal settlement conference at EPA Region 2's Edison, New Jersey offices. The settlement discussions were amicable and productive. Counsel for the Respondent submitted copies of lease documents that indicated the Respondent is now doing the required lead-based paint disclosure forms. Options available to the Respondent were discussed whereby it could possibly mitigate the proposed penalty, including but not limited to, reductions allowed under the Enforcement Response Policy (ERP) and voluntary performance of an abatement Supplemental Environmental Project (SEP).

At the conclusion of the January 29, 2008 settlement conference, the parties agreed Respondent would submit additional documentation to EPA to verify that Respondent had performed substantial renovation work whereby EPA may be able to mitigate the penalty at the 380-420 Mt. Pleasant Avenue in Newark, New Jersey and at Audubon Place in Belleville, NJ which properties are the subject of this enforcement matter.

On March 4, 2008, the parties held the first of three ADR sessions with the Neutral, Judge Gunning. On or about April 15, 2008, the second ADR session was held with the parties at

which time, Judge Gunning agreed to issue an Order to extend ADR for an additional month until May 24, 2008. On May 13, 2008, the third and final ADR session was held. The parties have made significant progress towards settlement of this matter as follows: (1) EPA has reviewed extensive documentation Respondent submitted regarding renovation work it completed at the subject properties that may have reduced the risk of exposure to lead-based paint for which possible reductions in the penalty may be given in addition to those reductions allowed under the ERP for cooperation and avoidance of litigation; (2) Respondent has reviewed and is continuing to search its records and lease documents to determine if further reductions may be given for: (a) units where no children under 6 years of age reside and/or where all tenants in the unit are 18 years or over, (b) units where Respondent did make the proper lead-based paint disclosures, but which leases were not available to EPA when the initial inspection was conducted due to non-EPA litigation Respondent was engaged in, and (c) verification by Respondent that window replacement had been accomplished prior to complaint issuance.

On May 7, 2008, EPA submitted to Respondent's Counsel a Draft Consent Agreement and Final Order (Draft CA/FO) for settlement discussion purposes. Respondent's Counsel will meet with Audubon's principals to discuss the Draft CA/FO and performance of an abatement SEP.

Demonstrated by the foregoing, the parties have made and continue to make significant progress towards settlement of this matter. The parties, therefore, will request at the appropriate time an extension of time to submit Prehearing Exchanges when the case is placed back on the litigation docket to allow the parties time to finalize the CA/FO.

Dated: May 23, 2008 New York, New York Respectfully Submitted,

Merva & Hayden by CHPL Melva J. Hayden, Esq.

Melva J. Hayden, Esq. V Counsel for Complainant Assistant Regional Counsel U.S. Environmental Protection Agency, Region 2 290 Broadway, 16th Floor New York, NY 10007-1866

In the Matter of Audubon Communities Management, LLC Docket No. TSCA-02-2007-9168

<u>CERTIFICATE OF SERVICE</u>

I certify that the foregoing Status Report, dated May 23, 2008 was sent this day in the following manner to the addressees below:

Original by Hand:

Copy by Facsimile & Pouch Mail:

Copy by Facsimile & Regular Mail:

Dated: MAY 2 3 2008

New York, NY

Ms. Karen Maples Regional Hearing Clerk U.S. Environmental Protection Agency, Region 2 290 Broadway, 16th floor New York, NY 10007-1866

Honorable Barbara A. Gunning Office of Administrative Law Judges U.S. Environmental Protection Agency Mail Code 1900 L 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

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