

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

**John Paul Sopenksy  
d/b/a John Sopenksy Properties  
5041 Lancaster Street  
Harrisburg, PA 17111**

**Respondent,**

**875-2 Clifton Heights  
Hummelstown, PA 17036  
5000-5 Lancaster Street  
Lancaster, PA 17603  
5011-B Lancaster Street  
Lancaster, PA 17603  
5021-E Lancaster Street  
Lancaster, PA 17603  
241-4 Locust Grove Court  
Harrisburg, PA 17109  
17 South Chestnut Street  
Harrisburg, PA 17103  
14 Clear Spring Road  
Mt. Joy, PA 17552  
127 South Chestnut Street  
Harrisburg, PA 17103  
212 State Road  
West Fairview, PA 17025  
6 North Arch Street  
Mechanicsburg, PA 17055  
101-2 East Main Street  
Mechanicsburg, PA 17055  
11 South Chestnut Street  
Harrisburg, PA 17103  
840-4 Clifton Heights Road  
Hummelstown, PA 17036  
145 3<sup>rd</sup> Street  
Enola, PA 17025  
232-2 State Street  
West Fairview, PA 17025  
905-3 Clifton Heights Road  
Hummelstown, PA 17036**

**Docket No. TSCA-03-2008-0433**

119 South Chestnut Street :  
Harrisburg, PA 17103 :  
875-1 Clifton Heights Road :  
Hummelstown, PA 17036 :  
885-3 Clifton Heights Road :  
Hummelstown, PA 17036 :  
:  
Target Housing. :

**ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY  
FOR A HEARING ISSUED PURSUANT TO SECTION 16(a) OF THE TOXIC  
SUBSTANCES CONTROL ACT (“TSCA”), 15 U.S.C. § 2615(a)**

This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators and this authority has been further delegated in U.S. EPA Region III to, *inter alia*, the Director of the Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. I2-2-A.

The Respondent in this action is John Paul Sopensky, individually, doing business as John Sopensky Properties. By issuing this Complaint, Complainant alleges violations by the Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the “Disclosure

Rule”), in relation to twenty (20) written lease agreements associated with twenty (20) different target housing units, described more fully in Paragraph 17 of this Complaint.

Failure to comply with Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.

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In support of the Complaint, Complainant alleges the following:

### **I. JURISDICTION**

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689; Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d; 40 C.F.R. Part 745, Subpart F; and 40 C.F.R. §§ 22.1(a)(5) and 22.4.

### **II. DEFINITIONS AND REGULATORY REQUIREMENTS**

2. Pursuant to 40 C.F.R. § 745.103, the term “agent” means, with certain exceptions, any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.
3. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm<sup>2</sup>] or 0.5 percent by weight.
4. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-

contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

5. Pursuant to 40 C.F.R. § 745.107(a)(1), the term “lead hazard information pamphlet” includes the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet approved for use in a state by EPA.
6. Pursuant to 40 C.F.R. § 745.103, the term “Lessee” means any entity that enters into an agreement to lease, rent, or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
7. Pursuant to 40 C.F.R. § 745.103, the term “Lessor” means any entity that offers target housing for lease, rent, or sublease, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.
8. Pursuant to Section 1004(23) of the RLBPHRA, 42 U.S.C. § 4851b(23), Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means: (1) A single-family dwelling, including attached structures such as porches and stoops; or (2) 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.
9. Pursuant to Section 1004(24) of the RLBPHRA, 42 U.S.C. § 4851b(24), and Section 401(15) of TSCA, 15 U.S.C. § 2681(15), the term “residential real property” means real

property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons.

10. Pursuant to Section 1004(27) of the RLBPHRA, 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means 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.
11. 40 C.F.R. § 745.113(b)(1) provides that each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following language: “Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”
12. 40 C.F.R. § 745.113(b)(2) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the 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. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist,

the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.

13. 40 C.F.R. § 745.113(b)(3) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

14. 40 C.F.R. § 745.113(b)(4) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15. John Paul Sopensky is an individual doing business as John Sopensky Properties.

16. At all times relevant to the violations in this Complaint, John Paul Sopensky (“Respondent”), was the “owner” and “lessor”, as those terms are defined in 40 C.F.R. § 745.103, of various real properties and the buildings thereon, as identified with particularity in Paragraph 17, below.

17. The nineteen (19) properties referred to in paragraph 16, above, are: 875-2 Clifton Heights, Hummelstown, PA; 5000-5 Lancaster Street, Lancaster, PA; 5011-B Lancaster Street, Lancaster, PA; 5021 Lancaster Street, Lancaster, PA; 241-4 Locust Grove Court, Harrisburg, PA; 17 South Chestnut Street, Harrisburg, PA; 14 Clear Spring Road, Mt. Joy, PA; 127 South Chestnut Street, Harrisburg, PA; 212 State Road, West Fairview, PA; 6 North Arch Street, Mechanicsburg, PA; 101-2 East Main Street, Mechanicsburg; 11 South

Chestnut Street, Harrisburg, PA; 840-4 Clifton Heights Road, Hummelstown, PA; 145 3<sup>rd</sup> Street, Enola, PA; 232-2 State Street, West Fairview, PA; 905-3 Clifton Heights Road, Hummelstown, PA; 119 South Chestnut Street, Harrisburg, PA; 875-1 Clifton Heights Road, Hummelstown, PA; and 885-3 Clifton Heights Road, Hummelstown, PA (hereinafter collectively referred to as the “20 Target Housing Properties”).

18. At all times relevant to the violations alleged herein, each of the 20 Target Housing Properties consisted of real property on which there was situated one or more buildings used as the home or residence for one or more persons.
19. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the 20 Target Housing Properties was housing constructed prior to 1978.
20. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the 20 Target Housing Properties consisted of housing that was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as provided in 40 C.F.R. § 745.103.
21. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the 20 Target Housing Properties contained a “residential dwelling” and was “target housing” within the meaning of Section 1004(23) and (27) of the RLBPHRA, 42 U.S.C. § 4851b(23) and (27), Section 401(14) and (17) of TSCA, 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.
  - A. **875-2 Clifton Heights (Lease Transaction #1)**
22. Respondent entered into a written contract, dated April 5, 2006 (hereinafter referred to as “Lease Transaction #1”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to

rent and/or lease the target housing located at 875-2 Clifton Heights, Hummelstown, Pennsylvania for a term of one year commencing on April 1, 2006 and terminating on March 31, 2007.

23. Lease Transaction #1 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
24. Lease Transaction #1 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**B. 5000-5 Lancaster Street (Lease Transaction #2)**

25. Respondent entered into a written contract, dated November 14, 2006 (hereinafter referred to as “Lease Transaction #2”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 5000-5 Lancaster Street, Lancaster, Pennsylvania for a term of slightly less than one year commencing on November 25, 2006 and terminating on October 31, 2007.
26. Lease Transaction #2 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
27. Lease Transaction #2 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).



**C. 5011-B Lancaster Street (Lease Transaction #3)**

28. Respondent entered into a written contract, dated March 21, 2006 (hereinafter referred to as "Lease Transaction #3") with a "Lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 5011-B Lancaster Street, Lancaster, Pennsylvania for a term of one year commencing on April 1, 2006 and terminating on March 31, 2007.
29. Lease Transaction #3 was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).
30. Lease Transaction #3 was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

**D. 5021- E Lancaster Street (Lease Transaction #4)**

31. Respondent entered into a written contract, dated May 4, 2006 (hereinafter referred to as "Lease Transaction #4") with a "Lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 5021-E Lancaster Street, Lancaster, Pennsylvania for a term of slightly more than a year commencing on May 15, 2006 and terminating on May 31, 2007.
32. Lease Transaction #4 was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).
33. Lease Transaction #4 was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where

no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**E. 241-4 Locust Grove Court (Lease Transaction #5)**

34. Respondent entered into a written contract, dated August 9, 2005 (hereinafter referred to as “Lease Transaction #5”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 241-4 Locust Grove Court, Harrisburg, Pennsylvania for a term of one year commencing on September 1, 2005 and terminating on August 31, 2006.

35. Lease Transaction #5 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

36. Lease Transaction #5 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**F. 17 South Chestnut Street (Lease Transaction #6)**

37. Respondent entered into a written contract, dated December 13, 2006 (hereinafter referred to as “Lease Transaction #6”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 17 South Chestnut Street, Harrisburg, Pennsylvania for a term of slightly over one year commencing on December 16, 2006 and terminating on December 31, 2007.

38. Lease Transaction #6 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

39. Lease Transaction #6 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**G. 14 Clear Spring Road (Lease Transaction #7)**

40. Respondent entered into a written contract, dated March 15, 2004 (hereinafter referred to as “Lease Transaction #7”) with a “Lessee,” as that term is defined at 40 C.F.R.

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§ 745.103, to rent and/or lease the target housing located at 14 Clear Spring Road, Mt. Joy, Pennsylvania for a term of one year commencing on March 20, 2004 and terminating on March 29, 2005.

41. Lease Transaction #7 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
42. Lease Transaction #7 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of lessor,” as provided at 40 C.F.R. § 745.101(d).

**H. 127 South Chestnut Street (Lease Transaction #8)**

43. Respondent entered into a written contract, dated April 28, 2006 (hereinafter referred to as “Lease Transaction #8”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 127 South Chestnut Street, Harrisburg, Pennsylvania for a term of slightly more than one year commencing on April 28, 2006 and terminating on April 30, 2007.

44. Lease Transaction #8 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
45. Lease Transaction #8 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**I. 212 State Road (Lease Transaction #9)**

46. Respondent entered into a written contract, dated June 19, 2004 (hereinafter referred to as “Lease Transaction #9”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 212 State Road, West Fairview, Pennsylvania for a term of slightly more than one year commencing on June 22, 2004 and terminating on June 30, 2005.
47. Lease Transaction #9 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
48. Lease Transaction #9 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**J. 6 North Arch Street (Lease Transaction #10)**

49. Respondent entered into a written contract, dated January 2, 2006 (hereinafter referred to as “Lease Transaction #10”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 6 North Arch Street, Mechanicsburg,

Pennsylvania for a term of slightly less than one year commencing on January 2, 2006 and terminating on December 31, 2006.

50. Lease Transaction #10 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
51. Lease Transaction #10 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**K. 101-2 East Main Street (Lease Transaction #11)**

52. Respondent entered into a written contract, dated February 6, 2004 (hereinafter referred to as “Lease Transaction #11”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 101-2 East Main Street, Mechanicsburg, Pennsylvania for a term of one year commencing on February 1, 2004 and terminating on January 31, 2005.
53. Lease Transaction #11 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
54. Lease Transaction #11 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**L. 11 South Chestnut Street (Lease Transaction #12)**

55. Respondent entered into a written contract, dated December 17, 2005 (hereinafter referred to as “Lease Transaction #12”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103,

to rent and/or lease the target housing located at 11 South Chestnut Street, Harrisburg, Pennsylvania for a term of slightly more than one year commencing on January 1, 2006 and terminating on January 1, 2007.

56. Lease Transaction #12 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
57. Lease Transaction #12 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**M. 840-4 Clifton Heights Road (Lease Transaction #13)**

58. Respondent entered into a written contract, dated November 12, 2006 (hereinafter referred to as “Lease Transaction #13”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 840-4 Clifton Heights Road, Hummelstown, Pennsylvania for a term of slightly less than one year commencing on November 12, 2006 and terminating on October 31, 2007.
59. Lease Transaction #13 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
60. Lease Transaction #13 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**N. 145 3<sup>rd</sup> Street (Lease Transaction #14)**

61. Respondent entered into a written contract, dated November 7, 2006 (hereinafter referred to as "Lease Transaction #14") with a "Lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 145 3<sup>rd</sup> Street, Enola, Pennsylvania for a term of slightly less than seven months commencing on November 8, 2006 and terminating on May 31, 2007.
62. Lease Transaction #14 was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).
63. Lease Transaction #14 was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

**O. 145 3<sup>rd</sup> Street (Lease Transaction #15)**

64. Respondent entered into a written contract, dated May 3, 2004 (hereinafter referred to as "Lease Transaction #15") with a "Lessee," as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 145 3<sup>rd</sup> Street, Enola, Pennsylvania for a term of slightly more than one year commencing on April 19, 2004 and terminating on April 30, 2005.
65. Lease Transaction #15 was not a "[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101(c).
66. Lease Transaction #15 was not a "[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new

information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**P. 232-2 State Street (Lease Transaction #16)**

67. Respondent entered into a written contract, dated June 17, 2005 (hereinafter referred to as “Lease Transaction #16”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 232-2 State Street, West Fairview, Pennsylvania for a term of one year commencing on July 1, 2005 and terminating on June 30, 2006.

68. Lease Transaction #16 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

69. Lease Transaction #16 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**Q. 905-3 Clifton Heights Road (Lease Transaction #17)**

70. Respondent entered into a written contract, dated July 15, 2006 (hereinafter referred to as “Lease Transaction #17”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 905-3 Clifton Heights Road, Hummelstown, Pennsylvania for a term of slightly less than one year commencing on August 5, 2006 and terminating on July 31, 2007.

71. Lease Transaction #17 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

72. Lease Transaction #17 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new



information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**R. 119 South Chestnut Street (Lease Transaction #18)**

73. Respondent entered into a written contract, dated July 20, 2006 (hereinafter referred to as “Lease Transaction #18”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 119 South Chestnut Street, Harrisburg, Pennsylvania for a term of slightly more than one year commencing on July 26, 2006 and terminating on July 31, 2007.

74. Lease Transaction #18 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

75. Lease Transaction #18 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**S. 875-1 Clifton Heights Road (Lease Transaction #19)**

76. Respondent entered into a written contract, dated February 22, 2006 (hereinafter referred to as “Lease Transaction #19”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 875-1 Clifton Heights Road, Hummelstown, Pennsylvania for a term of one year commencing on March 1, 2006 and terminating on February 28, 2007.

77. Lease Transaction #19 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

78. Lease Transaction #19 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**T. 885-3 Clifton Heights Road (Lease Transaction #20)**

79. Respondent entered into a written contract, dated January 26, 2006 (hereinafter referred to as “Lease Transaction #20”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 885-3 Clifton Heights Road, Hummelstown, Pennsylvania for a term of one year commencing on February 1, 2006 and terminating on January 31, 2007.

80. Lease Transaction #20 was not a “[s]hort-term lease of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).

81. Lease Transaction #20 was not a “[r]enewal of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

**IV. VIOLATIONS**

**Counts 1 - 20**

**(Violations of 40 C.F.R. §§ 745.113(b)(1)  
Regarding Lease Transactions #1 Through #20)**

82. The allegations contained in Paragraphs 1 through 81, above, of this Complaint are incorporated by reference herein as though fully set forth at length.

83. Respondent failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, each of

his twenty (20) lease transactions as identified in the Paragraphs 22 through 81, above.

84. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include a "Lead Warning Statement," containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, each of his Lease Transactions #1-20, constitutes 20 separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 21 - 40**

(Violations of 40 C.F.R. §§ 745.113(b)(2)  
Regarding Lease Transactions #1 - #20)

85. The allegations contained in Paragraphs 1 through 84, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
86. Respondent failed 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 a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, each of his Lease Transactions #1-20, as required by 40 C.F.R. § 745.113(b)(2).
87. Pursuant to 40 C.F.R. § 745.118(e), 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 a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, each of his Lease Transactions #1-20, constitutes 20 separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require (“statutory factors”). In developing a proposed penalty, Complainant takes into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and EPA’s *Section 1018 Disclosure Rule Final Enforcement Response Policy (“Final ERP”)*, dated December 2007, a copy of which is enclosed with this Complaint. The *Final ERP* provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

The penalty proposed herein does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes the assessment of a civil penalty of **\$56,800.00** for the violations alleged in this Complaint.

Pursuant to 40 C.F.R. § 22.14(a)(4)(i), an explanation of the number and severity of violations is as follows:

1. Explanation of Circumstance Level and Extent of Violation

A. Circumstance Levels:

- a) 40 C.F.R. § 745.113(b)(1) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(1) are deemed to represent a “high” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 2 violations in the ERP. As a result, each of the violations alleged in Counts 1 - 20 of this Complaint may be characterized as Circumstance Level 2 violations for purposes of calculating an

**Counts 41 - 60**  
**(Violations of 40 C.F.R. §§ 745.113(b)(4)**  
**Regarding Lease Transactions #1 Through #20**

88. The allegations contained in Paragraphs 1 through 87, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
89. Respondent failed to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, each of Lease Transactions #1 - #20, as required by 40 C.F.R. § 745.113(b)(4).
- 
90. Pursuant to 40 C.F.R. §745.118(e), Respondent's failure to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, each of his Lease Transactions #1 - #20, constitutes 20 separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**IV. CIVIL PENALTY**

Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, in the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This amount has been adjusted to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, which increases the civil penalties which can be assessed by EPA under TSCA for violations occurring on or after July 28, 1997 by 10%. This Rule also provides for a 17.23% penalty increase for all violations occurring after March 15, 2004, but the maximum penalties cannot exceed \$11,000 per violation at this time.

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent, and

appropriate penalty.

b) 40 C.F.R. § 745.113(b)(2) violations: Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(2) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 3 violations in the ERP. As a result, each of the violations alleged in Counts 21 – 40 of this Complaint may be characterized as Circumstance Level 3 violations for purposes of calculating an appropriate penalty.

c) 40 C.F.R. § 745.113(b)(4) violations: Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(4) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. As a result, each of the violations alleged in Counts 41 - 60 of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.

B. Extent Levels:

Failure to provide lead-based paint disclosures and/or certifications to lessees where no children or pregnant women live in the target housing is considered a “Minor Extent” violation under the ERP. However, failure to provide lead-based paint disclosures and/or certifications to lessees where children or pregnant women live in the target housing is considered a “Major Extent” violation under the ERP. Respondent failed to provide disclosures and/or certifications with respect to twenty (20) different lease agreements (Lease Transactions #1 through #20) to lessees in

which EPA has not determined whether children or pregnant women were present.

Accordingly, the Disclosure Rule violations associated with each of these twenty (20)

lease transactions are all "Minor Extent" violations.

## 2. Summary of Penalty Calculation

<u>Counts</u>	<u>Violations</u>	<u>Circumstance/Extent</u>	<u>Penalty</u>
1-20	113(b)(1)	Level 2, Minor Extent	\$1,550.00 per count x 20 counts = \$31,000
21-40	113(b)(2)	Level 3, Minor Extent	\$ 770.00 per count x 20 counts = \$15,400
41-60	113(b)(4)	Level 4, Minor Extent	\$ 520.00 per count x 20 counts = \$10,400
<b>Total:</b>			<b>\$56,800</b>

**Total Proposed Penalty for Counts 1 – 60: \$56,800.00**

EPA will consider, among other factors, Respondent's ability to pay the proposed civil penalty assessed in this Complaint. With respect to Respondent's ability to pay the proposed penalty, it Respondent's responsibility to provide to Complainant financial information to support and establish a claim by Respondent of an inability to pay the proposed penalty. To the extent that facts or circumstances, including, but not limited to, additional information concerning Respondent's ability to pay the proposed penalty that were unknown to Complainant at the time of the issuance of the Complaint become known to Complainant after issuance of the Complaint, such facts and circumstances may be considered as a basis for adjusting the civil penalty proposed in this Complaint.

### **QUICK RESOLUTION**

In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answers needs to be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Louis F. Ramalho (3RC30), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject Respondent to default pursuant to 40 C.F.R. § 22.17. Payment of the full penalty in accordance with this paragraph shall be made:

By Regular US Postal Service Mail:

U.S. Environmental Protection Agency - Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000



Contact Person: Natalie Pearson, 314-418-4087

By Private Commercial Overnight Delivery:

U.S. Environmental Protection Agency - Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact Person: Natalie Pearson, 314-418-4087

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Payment of the penalty as required by this Complaint may also be made by electronic transfer to:

Wire Transfers

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfers

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact: Jesse White, 301-887-6548  
ABA = 051036706  
Transaction Code 22 - Checking  
Environmental Protection Agency  
Account 310006  
CTX Format

On-Line Payment Option:

[WWW.PAY.GOV](http://WWW.PAY.GOV)

Enter sfo 1.1 in the search field. Open and complete the form.

The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)

800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment\\_cin.htm](http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm)

To ensure proper crediting of the payment, it must reference the paying Respondent's name and address and the EPA Docket Number (TSCA-03-2008-0433) of this Complaint. A notice of payment, including a copy of the check or receipt (for EFT or ACH), shall be sent simultaneously to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and to Louis F. Ramalho, Sr. Assistant Regional Counsel (3RC30), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Upon receipt of payment in full in accordance with Section 22.18(a)(3) of the Consolidated Rules of Practice, the Regional Administrator, or his designee, shall issue a Final Order to Respondent. Payment shall constitute a waiver of Respondent's right to contest the allegations in the Complaint and to appeal the Final Order.

#### **NOTICE AND OPPORTUNITY TO REQUEST A HEARING**

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against Respondent in this Complaint and a waiver of Respondent's right to a hearing on factual allegations. Failure to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Louis F. Ramalho, Senior Assistant Regional Counsel, at:

Office of Regional Counsel (3RC30)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

### **SETTLEMENT CONFERENCE**

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA and the RLBPHRA. Whether or not a hearing is requested, any Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve Respondent of his responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of each settling Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

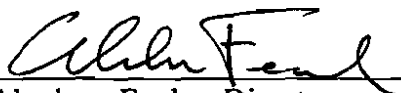
If Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Mr. Ramalho at (215) 814-2681 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve each Respondent of its/his responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

### **SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

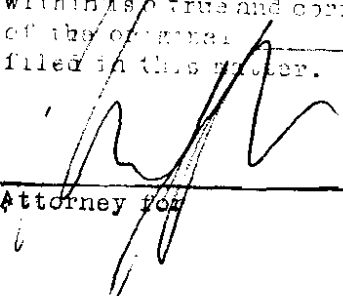
The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the

Region III Land and Chemicals Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

9/25/08  
Date

  
Abraham Ferdas, Director  
Land and Chemicals Division

I hereby certify that the  
within is a true and correct copy  
of the original  
filed in this matter.

  
Attorney for

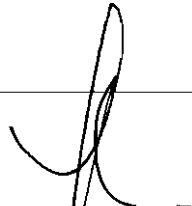
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, Docket No. TSCA-03-2008-0433, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following parties:

Overnight mail:

**John Paul Sopenksy**  
**d/b/a John Sopenksy Properties**  
**5041 Lancaster Street**  
**Harrisburg, PA 17111**

9/25/08  
Date



\_\_\_\_\_  
Louis F. Ramalho  
Sr. Assistant Regional Counsel  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

I hereby certify that I am  
withholding this information from the public  
under the provisions of the Freedom of Information Act.  
\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for