

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

_____))
In the Matter of:))
))
Private Reserve Properties, LLC))
59 Elmwood Avenue))
Providence, RI 02907))
))
Respondent,))
))
Proceeding under Section 16(a) of the))
Toxic Substances Control Act,))
42 U.S.C. § 261.5(a)))
_____)

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Docket Number:
TSCA-01 2012-0055

ANSWER OF PRIVATE RESERVE PROPERTIES, LLC

Pursuant to 40 CFR §22.15, Private Reserve Properties, LLC (“Respondent” or “PRP”) hereby answers the Environmental Protection Agency’s (“EPA”) Administrative Complaint as follows:

I. STATEMENT OF AUTHORITY

1. PRP states that paragraph 1 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

II. NATURE OF THE ACTION

2. PRP states that paragraph 2 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP denies that it has violated the statutes and regulations identified in the first sentence of paragraph

2. PRP admits the allegations in the second sentence of paragraph 2 that the Compliant purports to seek civil penalties of \$421,900 pursuant to Section 16 of TSCA, 15 U.S.C. §2615.

III. STATUTORY AND REGULATORY BACKGROUND

A. FEDERAL LEAD DISCLOSURE LAW

3. PRP states that paragraph 3 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
4. PRP states that paragraph 4 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
5. PRP states that paragraph 5 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
6. PRP states that paragraph 6 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
7. PRP states that paragraph 7 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is

without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

8. PRP states that paragraph 8 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
9. PRP states that paragraph 9 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

B. RHODE ISLAND LEAD DISCLOSURE LAW

10. PRP states that paragraph 10 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
11. PRP states that paragraph 11 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
12. PRP states that paragraph 12 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

13. PRP states that paragraph 13 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
14. PRP states that paragraph 14 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
15. PRP states that paragraph 15 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

IV. GENERAL ALLEGATIONS

16. PRP admits the allegations in paragraph 16.
17. PRP admits the allegations in paragraph 17.
18. PRP admits the allegations in paragraph 18.
19. PRP admits the allegations in paragraph 19.
20. PRP admits the allegations in paragraph 20.
21. PRP admits the allegations in paragraph 21.
22. PRP admits the allegations in paragraph 22.
23. PRP admits the allegations in paragraph 23.
24. PRP admits the allegations in paragraph 24.

25. PRP states that paragraph 25 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
26. PRP admits the allegations in paragraph 26.
27. PRP states that paragraph 27 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
28. PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 28, and therefore denies the same.
29. PRP admits that some of the lease contracts reviewed by EPA and identified in table 1 list children under the age of 18 among the individuals entitled to occupy the property or dwelling unit subject to the contract and denies the remainder of the matters asserted in paragraph 29.
30. PRP admits that the lease contracts identified in Table 2 list children under the age of six. PRP is without knowledge or information sufficient to form a belief as to the truth of the remainder of the matters asserted in paragraph 30, and therefore denies the same.
31. PRP admits that each of the lease transactions identified in Table 3 lists children between the ages of six and eighteen or individuals of unspecified age. PRP is without knowledge or information sufficient to form a belief as to the remainder of the matters asserted in paragraph 31, and therefore denies the same.
32. PRP denies the allegations in paragraph 32.

33. PRP denies the allegations in paragraph 33.
34. PRP denies the allegations in paragraph 34.
35. PRP denies the allegations in paragraph 35.
36. PRP admits the allegations in paragraph 36.
37. PRP admits the allegations in paragraph 37.
38. PRP admits the allegations in paragraph 38.
39. PRP admits the allegations in paragraph 39.
40. PRP states that paragraph 40 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
41. PRP admits the allegations in paragraph 41.
42. PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 42 and therefore denies the same.
43. PRP admits the allegations in paragraph 43.
44. PRP denies the allegations in paragraph 44.
45. PRP denies the allegations in paragraph 45.
46. PRP admits that it was unable to provide documents pertaining to lead-based paint or lead-based paint hazards at the time of the EPA inspection, but states that it subsequently provided such documents for some or all of the lease transactions identified in Table 5.
47. PRP denies the allegations in paragraph 47.
48. PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 48, and therefore denies the same.

49. PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the first sentence of paragraph 49 and therefore denies the same. PRP admits the allegations in the second sentence of paragraph 49.
50. PRP is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 relative to what documents EPA reviewed, and therefore denies the same. PRP admits that there are two completed lead disclosure forms for 31 Gilmore Street, Unit 3 and 36 Lenox Avenue, Unit 2, dated March 27, 2009 and September 25, 2009, respectively and that those forms were signed by the lessees and either an agent of PRP or Kenneth Trinique on behalf of PRP.
51. PRP admits the allegations paragraph 51 that it received Certificates of Conformance for the listed properties prior to engaging in the lease transactions in Tables 1-5, but denies that receipt of these documents establishes that it was aware of all federal disclosure requirements.

V. VIOLATIONS

52. PRP states that Paragraph 52 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP denies the allegations in paragraph 52.

FIRST COUNT:

Failure to Provide Lead Hazard Information Pamphlet

53. PRP repeats and reasserts its responses to paragraphs 1 through 52 as though fully set forth herein.
54. PRP states that paragraph 54 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is

without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

55. PRP denies the allegations in paragraph 55.

56. PRP denies that it failed to provide the lessees for each of the leases identified in Table 6 with an EPA-approved lead hazard information pamphlet. As to the remainder of the allegations in paragraph 56, PRP states that they do not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

SECOND COUNT:

Failure to Include Lead Warning Statement

57. PRP repeats and reasserts its responses to paragraphs 1 through 56 as though fully set forth herein.

58. PRP states that paragraph 58 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

59. PRP denies the allegations in paragraph 59.

60. PRP denies that it failed to include the “Lead Warning Statement” required by 40 C.F.R. § 745.113(b)(1) as an attachment to or within each of the lease contracts identified in Table 7. As to the remainder of the allegations in paragraph 60, PRP states that they do not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information

sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

THIRD COUNT:

Failure to Disclose Presence of Lead-Based Paint and/or Lead-Based Paint Hazards

61. PRP repeats and reasserts its responses to paragraphs 1 through 60 as though fully set forth herein.
62. PRP states that paragraph 62 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
63. PRP denies the allegations in paragraph 63.
64. PRP denies that it failed to include the required lead disclosure statement for each of the lease transactions identified in Table 8. As to the remainder of the allegations in paragraph 64, PRP states that they do not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

FOURTH COUNT:

Failure to Provide Available Records and Reports

65. PRP repeats and reasserts its responses to paragraphs 1 through 64 as though fully set forth herein.
66. PRP states that paragraph 66 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is

without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

67. PRP denies the allegations in the first sentence of paragraph 67. PRP is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 67, and therefore denies the same.

68. PRP denies that it failed to provide each of the lessees who leased the units identified in Table 9 with available records and reports pertaining to lead-based paint and/or lead based paint hazards. As to the remainder of the allegations in paragraph 68, PRP states that they do not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

FIFTH COUNT:

Failure to Certify that No Records or Reports Are Available

69. PRP repeats and reasserts its responses to paragraphs 1 through 68 as though fully set forth herein.

70. PRP states that paragraph 70 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

71. PRP denies the allegations in paragraph 71.

72. PRP denies that it failed to include a statement listing available records or reports pertaining to lead-based paint and/or lead based paint hazards or indicating that no such

records or reports were available for each of the properties in Table 10. As to the remainder of the allegations in paragraph 72, PRP states that they do not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

VI. PROPOSED PENALTY

73. PRP states that paragraph 73 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP denies that the violations as alleged in the Complaint occurred and that the proposed penalties have been properly calculated under the applicable statutes, regulations, policies and guidance documents. PRP further responds that the proposed penalties are excessive in amount, arbitrary and capricious, and devoid of any reasonable basis in fact or law.
74. PRP states that paragraph 74 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.
75. PRP states that paragraph 75 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP denies that the violations as alleged in the Complaint occurred and that the proposed penalties have been properly calculated under ERPP as applied to the facts and circumstances of this case. Moreover, PRP states that the proposed penalties are excessive in amount, arbitrary and capricious, and devoid of any reasonable basis in fact or law.

76. PRP states that paragraph 76 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP denies that the proposed penalties in paragraph 76 as set forth in Attachment A to the Complaint were properly calculated under the ERPP.

VII. QUICK RESOLUTION

77. PRP states that paragraph 77 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

78. PRP states that paragraph 78 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

VIII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

79. PRP states that paragraph 79 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP hereby requests a hearing on all matters alleged in the Complaint

80. PRP states that paragraph 80 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

81. PRP states that paragraph 81 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is

without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

82. PRP states that paragraph 82 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

IX. OPPORTUNITY FOR INFORMAL SETTLEMENT CONFERENCE

83. PRP states that paragraph 83 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

84. PRP states that paragraph 84 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

X. CONTINUED COMPLIANCE OBLIGATION

85. PRP states that paragraph 85 does not contain any allegations of fact that PRP is required to either admit or deny. However, to the extent that a response is required, PRP is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore denies the same.

REQUEST FOR A HEARING

Pursuant to 40 C.F.R. §22.15(c), PRP hereby requests a hearing on all matters alleged in the Complaint.

WHEREFORE, Respondent Private Reserve Properties, LLC respectfully requests that the Hearing Officer enter a decision in its favor on all counts of the Complaint, dismiss the Complaint and all counts therein with prejudice and award PRP such other and further relief as the Hearing Officer deems just and proper.

Respondent,
Private Reserve Properties, LLC
By its Attorneys,



Kristen W. Sherman, Esq. (R.I. Bar #5595/MA Bar #630141)

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Dated: January 10, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Answer was served on the following via hand-delivery on the 10th day of January, 2013:

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Kristen W. Sherman