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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

2012 AUG 17 AM 10: 35
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

IN THE MATTER OF:

Mr. James Ganoe
HC 64 Box 3300
(Romney, West Virginia 26757

Mr. Thomas Ganoe
26 Oates Avenue
Winchester, VA 22601

RESPONDENTS

521 W. Main Street
Romney, West Virginia, 26757

420 West Gravel Lane
Romney, West Virginia, 26757

HC 78, Box138
Kirby, West Virginia, 26755

TARGET HOUSING

U.S. EPA Docket No. TSCA-03-2012-0226
COMPLAINT AND NOTICE OF
RIGHT TO REQUEST HEARING

Proceeding under Sections 409 and 16(a)
of the Toxic Substances Control Act
15 U.S.C. §§ 2689 and 2615(a)

COMPLAINT AND NOTICE OF RIGHT TO REQUEST HEARING

This is a civil administrative action instituted under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) ("TSCA"). The Administrator has delegated this authority under TSCA to the Regional Administrators, and this authority has been further delegated within EPA Region III to the Director of the Land and Chemicals Division ("Complainant"). Complainant issues this Complaint and Notice of Right To Request Hearing ("Complaint") to James Ganoe and Thomas Ganoe ("Respondents") for violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.* ("RLBPHRA"), the regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F (the "Disclosure Rule") 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"), which statutory and regulatory

provisions are enforceable pursuant to Section 409 of TSCA, 15 U.S.C. § 2689. Complainant hereby alleges the following:

GENERAL ALLEGATIONS

1. EPA and the Office of Administrative Law Judges have jurisdiction of this matter under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. § 4852d, Sections 16(a) and 409 of TSCA, 15 U.S.C., §§2615(a) and 2689, 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule.”) and 40 C.F.R. §§22.1(a)(5) and 22.4.
2. Respondents, James Ganoë and Thomas Ganoë, are “persons” within the meaning of such term in TSCA §§ 15 and 16, 15 U.S.C. §§ 2614 and 2615.
3. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), 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 six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.”
4. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either a single family dwelling, including attached structures such as porches and stoops, or 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.
5. Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. § 4851b(24), and TSCA Section 401(15), 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence for one or more persons.

6. At all times relevant to the violations alleged herein, 521 W. Main Street, which is located in Romney West Virginia (hereafter referred to as "521 W. Main Street") was residential real property on which there was situated a building or building(s). Each such building was used as the home or residence for one or more persons and was and is housing constructed prior to 1978.
7. At all times relevant to the violations alleged herein, 420 West Gravel Lane, which is located in, Romney West Virginia (hereafter referred to as "420 West Gravel Lane") was residential real property on which there was situated a building or building(s). Each such building was used as the home or residence for one or more persons and was and is housing constructed prior to 1978.
8. At all times relevant to the violations alleged herein, HC 78 (BOX 138), which lays on the west side of Tearcoat Road in the Sherman District in Hampshire County, and is located in Kirby West Virginia (hereafter referred to as "HC 78"), was residential real property on which there was situated a building or building(s). Each such building was used as the home or residence for one or more persons and was and is housing constructed prior to 1978.
9. The buildings located on the Properties at the time of the violations alleged herein were not housing used for the elderly or for persons with disabilities and were not 0-bedroom dwellings within the meaning of 40 C.F.R. § 745.103.
10. The buildings located on the residential real properties 521 W. Main, 420 West Gravel Lane and HC 78 (hereafter collectively known as the "Properties"), at the time of the violations alleged herein, were "target housing" within the meaning of RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103 and are hereafter referred to as "Target Housing"
11. Pursuant to 40 C.F.R. § 745.103, the term "owner" means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts,

government agencies, housing agencies, Indian tribes and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

12. At the time of the violations alleged herein, Respondents had legal title to the Properties and the buildings located thereon and were therefore the “owners” of such “target housing” as those terms are defined by 40 C.F.R. § 745.103.
13. 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.”
14. 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.”
15. 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^2] or 0.5 percent by weight.”
16. 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.
17. On September 1, 2007, Respondents, in their capacity as “owners” and “lessors” of the Target Housing, entered into a written contract (the “521 W. Main Street Apartment B 2007 Lease Agreement”) with two lessees (the “521 W. Main Street Apartment B 2007 Lessees”) to rent and/or lease one (1) “residential dwelling” (i.e., a single-family

dwelling unit) Apartment B, located within the 521 W. Main Street Target Housing for a term of one year.

18. The 521 W. Main Street Apartment B 2007 Lessees moved into, and resided at, the 521 W. Main Street Apartment B Target Housing during the term of the 521 W. Main Street Apartment B 2007 Lease Agreement, September 1, 2007 to August 31, 2008.
19. On June 26, 2008, Respondents, in their capacity as “owners” and “lessors” of the Target Housing, entered into a written contract (the “521 W. Main Street Suite B 2008 Lease Agreement”) with one lessee (the “521 W. Main Street Suite B 2008 Lessee”) to rent and/or lease one (1) “residential dwelling” (i.e., a single-family dwelling unit) Suite B, located within the 521 W. Main Street Target Housing for a term of one year.
20. The 521 W. Main Street Suite B 2008 Lessee moved into, and resided at, the 521 W. Main Street Suite B Target Housing during the term of the 521 W. Main Street Suite B 2008 Lease Agreement, September 1, 2008 to September 1, 2009.
21. On September 1, 2007, Respondents, in their capacity as “owners” and “lessors” of the Target Housing, entered into a written contract (the 420 West Gravel Lane Lease Agreement”) with two lessees (the “ 420 West Gravel Lane Lessees”) to rent and/or lease one (1) “residential dwelling” (i.e., a single-family dwelling unit) located within the 420 West Gravel Lane Target Housing for a term of one year.
22. The 420 West Gravel Lane Lessees and three children, at least one of which was under the age of six years old, moved into, and resided at, the 420 West Gravel Lane Target Housing during the term of the Lease Agreement, September 1, 2007 to August 31, 2008.
23. On August 20, 2007, Respondents, in their capacity as “owners” and “lessors” of the Target Housing, entered into a written contract (the “HC 78 2007 Lease Agreement”) with two lessees (the “HC78 2007 Lessees”) to rent and/or lease one (1) “residential dwelling” (i.e., a single-family dwelling unit), located within the HC78 Target Housing for a term of one year.

24. The 2007 HC78 Lessees moved into, and resided at, the HC78 Target Housing during the term of the HC 78 2007 Lease Agreement, September 1, 2007 to August 31, 2008.
25. On October 1, 2008, Respondents, in their capacity as “owners” and “lessors” of the Target Housing, entered into a written contract (the “HC78 2008 Lease Agreement”) with one lessee (the “HC78 2008 Lessees”) to rent and/or lease one (1) “residential dwelling” (i.e., a single-family dwelling unit), located within the HC78 Target Housing for a term of one year.
26. The HC78 2008 Lessee moved into, and resided at, the HC78 Target Housing during the term of the HC 78 2008 Lease Agreement, October 1, 2008 to September 30, 2009.
27. At the time that the 521 W. Main Street Apartment B 2007, 521 W. Main Street Suite B 2008, 420 West Gravel Road, HC 78 2008 and HC 78 2009 Lease Agreements (collectively “Lease Agreements”) were executed, and at all times relevant to the violations alleged herein, Respondents were the “lessors” of such “target housing”, and the 521 W. Main Street Apartment B 2007, 521 W. Main Street Suite B 2008, 420 West Gravel Road, HC 78 2008 and HC 78 2009 Lessees were the “lessees” of such “target housing” as those terms are defined in 40 C.F.R. § 745.103.
28. The Lease Agreements were not renewals of existing leases of target housing 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 had come into the possession of the lessor.
29. During the term of the 420 West Gravel Lane Lease Agreement one of the children of the 420 West Gravel Lane Lessees was diagnosed as having elevated blood lead levels (“EBL”).
30. 40 C.F.R. § 745.118(e) provides, in pertinent part, that failure or refusal to comply with 40 C.F.R. §§ 745.107, .110, .113 and/or .115 constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS I - V

(Failure to provide Lead Warning Statement to Lessee)

31. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
32. 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 containing 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” .
33. Respondents did not include as an attachment to or within the Lease Agreements a Lead Warning Statement containing the language required by 40 C.F.R. § 745.113(b)(1).
34. Pursuant to 40 C.F.R. § 745.118(e), Respondents’ failure to include as an attachment to or within the Lease Agreements, a Lead Warning Statement containing the language required by 40 C.F.R. §745.113(b)(1) constitutes five separate violations of 40 C.F.R. §745.113(b)(1), RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS VI - X

(Failure to disclose the presence of lead-based paint and/or lead-based paint hazards)

35. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
36. Pursuant to 40 C.F.R. § 745.113(b)(2), the lessor is required to include, either as an

attachment to or within the contract for lease, a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or lessor's lack of knowledge of such presence.

37. Respondents' Lease Agreements did not include, as an attachment to or within the Lease Agreements, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the associated Target Housing, or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in such Target Housing.
38. Respondents' failure to comply with 40 C.F.R. § 745.113(b)(2) by not including, either as an attachment to or within the Lease Agreements, a statement disclosing the presence of lead-based paint and/or lead-based paint hazards in the associated Target Housing, or Respondents' lack of knowledge of such presence, constitutes five separate violations of 40 C.F.R. § 745.113(b)(2), RLBPBRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

COUNTS XI - XV

(Failure to provide a statement by the lessee affirming receipt of information)

39. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
40. Pursuant to 40 C.F.R. § 745.113(b)(4), the lessor is required to include, either as an attachment or within the contract for lease, a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2696.
41. Respondents' Lease Agreements did not include, as an attachment or within the Lease Agreements, a statement by the relevant lessee(s) affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2696.

42. Respondent’s failure to include either as an attachment to or within the Lease Agreements, a statement by the relevant lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 U.S.C. § 2696 constitutes five separate violations of 40 C.F.R. § 745.113(b)(4), RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

CIVIL PENALTY

43. Section 1018 of RLBPHRA authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615(a), 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 under the Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, which increases the maximum civil penalty under the RLBPHRA to \$11,000 for violations occurring after March 15, 2004 through January 12, 2009. For purposes of determining the amount of any civil penalty to be assessed, TSCA § 16 requires EPA to take into account the nature, circumstances, extent and 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. EPA also takes into account the Enforcement Response and Penalty Policy for actions taken under the Residential Lead-Based Paint Hazard Reduction Act of 1992 dated December 20, 2007 (“ERPP”)

44. Based on the facts alleged in this Complaint as known to Complainant at this time, the statutory factors identified above and the ERPP, Complainant proposes that Respondents be assessed the following civil penalty for the violations alleged herein.

COUNTS

I-V **40 C.F.R. § 745.113(b)(1)-** Respondents’ failure to provide EPA-approved lead warning statements.

521 W. Main St.	Apartment B 113(b)(1)	Level 2 Minor	\$ 1,550.00
521 W. Main St.	Suite B 113(b)(1)	Level 2 Minor	\$ 1,550.00
420 West Gravel Lane	113(b)(1)	Level 2 Major	\$10,320.00

HC 78 (2007)	113(b)(1)	Level 2	Minor	\$ 1,550.00
HC 78 (2008)	113(b)(1)	Level 2	Minor	\$ 1,550.00

VI-X 40 C.F.R. § 745.113(b)(2)- Respondents’ failure to disclose the presence of known lead-based paint and/or lead-based paint hazards.

521 W. Main St. (A-B)	113(b)(2)	Level 3	Minor	\$ 770.00
521 W. Main St. (S-B)	113(b)(2)	Level 3	Minor	\$ 770.00
420 West Gravel Lane	113(b)(2)	Level 3	Major	\$ 7,740.00
HC 78 (2007)	113(b)(2)	Level 3	Minor	\$ 770.00
HC 78 (2008)	113(b)(2)	Level 3	Minor	\$ 770.00

XI-XV 40 C.F.R. § 745.113(b)(4)- Respondents’ failure to include a statement by the lessees affirming receipt of the information

521 W. Main St. (A-B)	113(b)(4)	Level 4	Minor	\$ 520.00
521 W. Main St. (S-B)	113(b)(4)	Level 4	Minor	\$ 520.00
420 West Gravel Lane	113(b)(4)	Level 4	Major	\$ 5,160.00
HC 78 (2007)	113(b)(4)	Level 4	Minor	\$ 520.00
HC 78 (2008)	113(b)(4)	Level 4	Minor	\$ 520.00

Total Proposed Penalty \$34,580.00

45. The following factors were analyzed regarding Respondents’ degree of culpability: Respondents’ degree of control over the violations; Respondents’ knowledge of the presence of lead-based paint and/or lead-based paint hazards in the target housing being leased and Respondents’ level of sophistication and knowledge of the legal requirements in issue.
46. To the extent that facts or circumstances, including but not limited to additional information available concerning Respondents’ ability to pay the proposed penalty or continue in business after payment of the proposed penalty, which 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 also be considered as basis for adjusting the civil penalty proposed in this Complaint. With respect to Respondents’ ability to pay the proposed penalty, it is Respondents’ responsibility to produce financial information to support and establish any claim by Respondents of an inability to pay the proposed penalty.
47. The penalty proposed herein is not a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

Notice and Opportunity to Request a Hearing

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

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

49. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondents have any knowledge. The Answer should contain: (1) the circumstances and/or arguments which are alleged to constitute the grounds of any defense, (2) the facts which Respondents dispute, (3) the basis for opposing any proposed relief, and (4) a statement of whether a hearing is requested. The failure of Respondents to admit, deny or explain any material factual allegation contained in the Complaint shall constitute an admission of such allegation.
50. Failure to file a written Answer within thirty (30) days after service of this Complaint upon Respondents may result in the issuance of a Default Order imposing the penalties herein without further proceedings. A default by Respondents constitutes, for the purpose of this proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations.
51. Any hearing requested by the Respondents will be held at a location to be determined at a later date pursuant to the Consolidated Rules. The hearing will be conducted in accordance with the provisions of the Consolidated Rules. A copy of the Consolidated Rules is enclosed with this Complaint.
52. A copy of Respondents' Answer and all other documents that Respondents file in this action should be sent to the attorney assigned to this case:

Rodney Travis Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street (3RC50)
Philadelphia, PA 19103

Quick Resolution

53. In accordance with the Consolidated Rules at § 22.18(a), Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint in full as specified below and filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If Respondents pay the full penalty proposed herein within 30 days after receiving this Complaint, then no Answer need be filed. Respondents shall pay the civil penalty amount assessed above, plus any interest, administrative fees, and late payment penalties owed, by cashier's check, certified check, or electronic wire transfer, in the following manner:

- A. All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2011-0217;
- B. All checks shall be made payable to "**United States Treasury**";
- C. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Craig Steffen 513-487-2031

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA Fines & Penalties
U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- I. A copy of Respondents' check or a copy of Respondents' electronic fund transfer shall be sent simultaneously to:

Rodney Travis Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

54. If Respondents need additional time to pay the penalty, they may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondents agree to pay the proposed penalty in accordance with Section 22.18(a)(1) of the Consolidated Rules. The written statement need not contain any response to, or admission of, the allegations in this Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days after receiving this Complaint, Respondents shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of this Complaint may subject Respondents to a Default Order pursuant to Section 22.17 of the Consolidated Rules.
55. Upon receipt of payment in full in accordance with Section 22.18(a)(3) of the Consolidated Rules, the Regional Administrator, or his designee, shall issue a Final Order. Payment by Respondents shall constitute a waiver of Respondents' right to contest the allegations in the Complaint and to appeal the Final Order.

Settlement Conference

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

57. If you wish to arrange a settlement conference, please contact Mr. Carter, Senior Assistant Regional Counsel, at (215) 814-2478. Once again, however, such a request for a settlement conference does not relieve Respondents of their responsibility to file an Answer within thirty (30) days following Respondents' receipt of this Complaint.

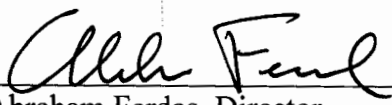
Consent Agreement and Final Order

58. 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 Respondents' right to contest the allegations and to appeal the Final Order accompanying the Consent Agreement

Separation of Functions/Ex Parte Communications

59. The following Agency officers, 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 Chemical Safety and Pollution Prevention, 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* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules prohibit any unilateral discussion or *ex parte* communications by either party hereto regarding this merits of the case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or Regional Judicial Officer after issuance of the Complaint.

8/16/12
Date


Abraham Ferdas, Director
Land and Chemicals Division

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CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

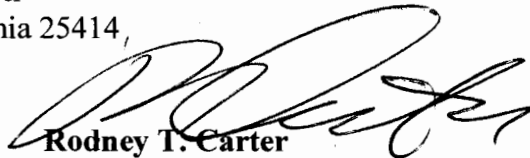
I hereby certify that the original and one copy of the foregoing Complaint and Notice of Right to Hearing, Docket No. **TSCA-03-2012-0226**, has been filed with the EPA Region III Regional Hearing Clerk and that I caused copies to be sent, express mail, return receipt requested to:

Mr. James Ganoe
HC 64 Box3300,
Romney, WV 26757

Mr. Thomas Ganoe
26 Oates Avenue
Winchester, VA 22601.

James T. Kratovil, Esquire
Kratovil & Amore
21 W. Washington St.
Charles town
West Virginia 25414,

8/17/12 Date



Rodney T. Carter
Senior Assistant Regional Counsel
United States
Environmental Protection Agency
Region III