



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 23 2009

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 4175

Mr. Rick Punches
5 Cummings Avenue, NW
Grand Rapids, Michigan 49534

Re: In the Matter of Rick Punches, Docket No: TSCA-05-2009-0010

Dear Mr. Punches:

I have enclosed a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Rick Punches, under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seq.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Maria Gonzalez, Associate Regional Counsel, at (312) 886-6630.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Rick Punches)
Grand Rapids, Michigan)
)
Respondent,)
_____)

Docket No. TSCA-05-2009-0010
Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic Substances
Control Act, 15 U.S.C. § 2615(a)

RECEIVED
JUL 23 2009

Complaint

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Rick Punches, an individual who resides at 5 Cummings Avenue, N.W., Grand Rapids, Michigan 49534.

Statutory and Regulatory Background

4. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. §§ 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are

mandatory disclosure and notification requirements for residential rentals and sales. Section 1018, 42 U.S.C. § 4852d, requires the Administrator of EPA and the Secretary of the U.S. Department of Housing and Urban Development to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. On March 6, 1996, EPA and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with the Disclosure Rule by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which impose certain requirements on the sale or lease of target housing.

7. 40 C.F.R. § 745.103 defines target housing as 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.

8. 40 C.F.R. § 745.103 defines “lessor” as 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.

9. 40 C.F.R. § 745.103 defines “lessee” as 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.

10. 40 C.F.R. § 745.103 defines “seller” as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals,

partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations

11. 40 C.F.R. § 745.103 defines “purchaser” as any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

12. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

13. 40 C.F.R. § 745.113(a) requires that each contract to sell target housing include an attachment containing a lead warning statement; a statement by the seller disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the seller that have been provided to the purchaser regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records are available; a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the Lead Hazard Information Pamphlet; a statement by the purchaser that he/she has received or waived the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a); and signatures and dates of signatures of the seller and purchaser certifying the accuracy of their statements.

14. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor

regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

15. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

16. The Administrator of EPA may assess a civil penalty of up to \$11,000 for each violation of Section 409 of TSCA that occurred after July 28, 1997 through January 12, 2009, pursuant to 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19.

General Allegations

17. Complainant incorporates paragraphs 1 through 16 of this Complaint as if set forth in this paragraph.

18. At various times between January 11, 2003 and April 1, 2008, Respondent owned single-family dwellings and duplex apartments at 725 Fulton, NW; 516½ 4th; 924 Sheridan, SW; 926 Sheridan, SW; 929½ Sheridan, SW; and 714 Veto Street, NW; Grand Rapids, Michigan (Respondent's Properties).

19. Respondent's Properties were constructed prior to 1978.

20. Respondent's Properties are "target housing" as defined in 40 C.F.R. § 745.103.

21. On June 27, 2006, a representative of the EPA spoke with Respondent by phone to schedule an inspection to monitor Respondent's compliance with Section 1018 and its implementing regulations at 40 C.F.R. Part 745, Subpart F.

22. On June 27, 2006, following the phone call referenced in paragraph 21, above, EPA's representative faxed a letter to Respondent explaining the Section 1018 requirements, the scope of a Section 1018 compliance inspection, and the EPA's legal authority to monitor compliance with Section 1018.

23. On June 28, 2006, Respondent left a voice mail message with EPA's representative stating Respondent would not participate in a Section 1018 compliance monitoring inspection

24. On June 20, 2007, Complainant issued an administrative subpoena to Respondent, under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all rental agreements, contracts for sale, and lead-based paint disclosure documentation for rental and sales for properties owned and/or managed by Respondent since March 15, 2002.

25. On June 26, 2007, Respondent's representative acknowledged receipt of the June 20, 2007 administrative subpoena, referenced in paragraph 24, above, by signing and dating the certified mail receipt card that accompanied the June 20, 2007 administrative subpoena.

26. On July 27, 2007, Complainant reissued the June 20, 2007 administrative subpoena, referenced in paragraph 24, above, with corrections to page two of the cover letter to the June 20, 2007 administrative subpoena.

27. On August 9, 2007, Respondent acknowledged receipt of the July 27, 2007 reissued administrative subpoena, referenced in paragraph 26, above, by signing and dating the certified mail receipt card that accompanied the July 27, 2007 reissued administrative subpoena.

28. On March 20, 2008, a representative of the United States Marshals Service personally served Respondent with the July 27, 2007 reissued administrative subpoena, referenced in paragraph 26, above.

29. On May 8, 2008, Respondent provided Complainant with documents responsive to the TSCA administrative subpoena referenced in paragraphs 24, 26, and 28, above.

30. On December 18, 2000, the Kent County Health Department (KCHD) sent Respondent a certified letter identifying lead-based paint hazards at 516½ 4th Street, Apt. 2, Grand Rapids, Michigan found by the Environmental Health Division of KCHD during their investigation concerning a lead-poisoned child; stating that this residence poses a threat to human health; that the identified lead-based paint hazards are in violation of the housing regulations for Kent County; and that the identified lead-based paint hazards must be corrected.

31. On December 18, 2000, KCHD sent Respondent a certified letter identifying lead-based paint hazards at 357 Spencer, NE, Grand Rapids, Michigan found by the Environmental Health Division of KCHD during their investigation concerning a lead-poisoned child; stating that this residence poses a threat to human health; that the identified lead-based paint hazards are in violation of the housing regulations for Kent County; and that the identified lead-based paint hazards must be corrected.

32. On October 15, 2001, KCHD sent Respondent a certified letter identifying lead-based paint hazards at 714 Veto, NW, Grand Rapids, Michigan found by the Environmental Health Division of KCHD during their investigation concerning a lead-poisoned child; stating that this residence poses a threat to human health; that the identified lead-based paint hazards are in violation of the housing regulations for Kent County; and that the identified lead-based paint hazards must be corrected.

33. On July 23, 2004, Respondent entered into a written sales agreement through a warranty deed (contract) with an individual for the sale of the target housing at 714 Veto Street, NW, Grand Rapids, Michigan.

34. Respondent is a “seller” as defined in 40 C.F.R. § 745.103, since he transferred legal title of the target housing referenced in paragraph 33, above, in return for consideration.

35. The individual who signed the contract to purchase the target housing referenced in paragraph 33, above, became a “purchaser” as defined in 40 C.F.R. § 745.103, since she entered into an agreement to purchase an interest in target housing.

36. On the following date(s), Respondent entered into the following five written lease agreements (contracts) with individuals for the lease of Respondent’s single-family dwellings and duplex apartments in Grand Rapids, Michigan:

Address	Date of Lease	Date of Written Disclosure
516½ 4 th	3/1/2008	3/1/2008
725 Fulton, NW	1/1/2007	2/22/2008
924 Sheridan, SW	11/2/2006	11/2/2006
926 Sheridan, SW	6/14/2007	6/14/2007
929½ Sheridan, SW	1/1/2008	1/3/2008

37. Each of the five contracts referenced in paragraph 36, above, covered a term of occupancy greater than 100-days.

38. Between November 2, 2006 and March 1, 2008, Respondent offered for lease his single-family dwellings and duplex apartments, and individuals entered into contracts on the dates listed in paragraph 36, above, to lease those single-family dwellings and duplex apartments.

39. Respondent is a “lessor” as defined in 40 C.F.R. § 745.103, since he has offered the target housing referenced in paragraph 36, above, for lease.

40. Each individual who signed a lease to pay rent in exchange for occupancy of a single-family dwelling or duplex apartment, referenced in paragraph 36, above, became a “lessee” as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

41. On May 21, 2009, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, the EPA asked Respondent to submit specific financial documents.

42. On May 23, 2009, Respondent acknowledged receipt of the pre-filing notice letter referred in paragraph 41.

43. On June 15, 2009, EPA sent Respondent a letter granting an extension of time until June 30, 2009, for Respondent to respond to EPA's May 21, 2009 notice of intent to file a civil administrative complaint, referenced in paragraph 41, above.

44. On July 1, 2009, EPA sent Respondent a letter memorializing a telephone conversation between Respondent and EPA's representative whereby EPA agreed to a second extension of time, until July 8, 2009, for Respondent to respond to EPA's May 21, 2009 notice of intent to file a civil administrative complaint by providing tax returns and other financial information concerning Respondent's ability to pay a penalty. As of July 14, 2009, EPA had not received a written response to the notice of intent or such documentation.

45. In telephone conversations with EPA's representative, Respondent asserted an inability to pay the penalty referenced in EPA's May 21, 2009 notice of intent to file a civil administrative complaint. EPA will consider any credible information that Respondent submits to support that claim.

Failure to Disclose in Sales Transactions

Count 1

46. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

47. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(1) requires the seller to include a Lead Warning Statement as an attachment to each contract to sell target housing.

48. Count 1: Respondent failed to include a Lead Warning Statement in an attachment to the sales contract for 714 Veto Street, NW, Grand Rapids, Michigan, in the July 23, 2004 contract referenced in paragraph 33, above.

49. Respondent's failure to include a Lead Warning Statement as an attachment to the contract to sell the target housing referenced in paragraph 48, above, constitutes a violation of 40 C.F.R. § 745.113(a)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 2

50. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

51. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(2) requires a seller to include, as an attachment to the contract to sell target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or a lack of knowledge of such presence.

52. Count 2: Respondent failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence in an attachment to the sales contract for 714 Veto Street, NW, Grand Rapids, Michigan, in the July 23, 2004 contract referenced in paragraph 33, above.

53. Respondent's failure to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence in an attachment to the contract to sell target housing, as referenced in paragraph 52, above, constitutes a violation of 40 C.F.R. § 745.113(a)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 3

54. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

55. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(3) requires the seller to include, as an attachment to the contract to sell target housing, a list of records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser or a statement that no such records or reports are available.

56. Counts 3: Respondent failed to include a list of any records or reports, available to the seller regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the sales contract for 714 Veto Street, NW, Grand Rapids, Michigan, in the July 23, 2004 contract referenced in paragraph 33, above.

57. Respondent's failure to include a list of any records or reports, available to the

seller regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the contract to sell target housing, as referenced in paragraph 56, above, constitutes a violation of 40 C.F.R. § 745.113(a)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 4

58. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

59. 40 C.F.R. §745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(4) requires the seller to include, as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) and (a)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

60. Count 4: Respondent failed to include a statement from the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696 in an attachment to the sales contract for 714 Veto Street, NW, Grand Rapids, Michigan, in the July 23, 2004 contract referenced in paragraph 33, above.

61. Respondent's failure to include a statement from the purchaser affirming receipt of the information set out in 40 C.F.R. § 113(a)(2) and (3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696 in an attachment to the contract to sell target housing, as referenced in paragraph 60, above, constitutes a violation of 40 C.F.R. § 745.113(a)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 5

62. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

63. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before a purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(5) requires the seller to include, as an attachment to the contract, a statement by the purchaser that the purchaser has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity.

64. Count 5: Respondent failed to include a statement by the purchaser that she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity in an attachment to the sales contract for 714 Veto Street, NW, Grand Rapids, Michigan, in the July 23, 2004 contract referenced in paragraph 33, above.

65. Respondent's failure to include a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity as an attachment to the contract to sell the target housing referenced in paragraph 64, above, constitutes a violation of 40 C.F.R. § 745.113(a)(5), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 6

66. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

67. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before a purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(7) requires the seller to include, as an attachment to the contract, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

68. Count 6: Respondent failed to include the signatures of the seller, agent, and the purchaser certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the sales contract for 714 Veto Street, NW, Grand Rapids, Michigan, in the July 23, 2004 contract referenced in paragraph 33, above.

69. Respondent's failure to include the signatures of the seller, agent, and the purchaser certifying to the accuracy of their statements along with the dates of such signatures, in an attachment to the contract to sell target housing, as referenced in paragraphs 68, above, constitutes a violation of 40 C.F.R. § 745.113(a)(7), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Failure to Disclose in Rental Transactions

Counts 7 and 8

70. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

71. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target

housing. 40 C.F.R. § 745.113(b)(1) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a Lead Warning Statement.

72. Count 7: Respondent failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 725 Fulton, NW, Grand Rapids, Michigan, in the January 1, 2007 contract referenced in paragraph 36, above.

73. Count 8: Respondent failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 929½ Sheridan, SW, Grand Rapids, Michigan, in the January 1, 2008 contract referenced in paragraph 36, above.

74. Respondent's failure to include a Lead Warning Statement, either within each contract or as an attachment to each contract, for each leasing transaction referenced in paragraphs 72 and 73, above, constitute two violations of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 9 through 11

75. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

76. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence.

77. Count 9: Respondent failed to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of

knowledge of such presence, either within the contract or as an attachment to the contract for 516½ 4th, Grand Rapids, Michigan, in the March 1, 2008 contract referenced in paragraph 36, above.

78. Count 10: Respondent failed to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for 725 Fulton, NW, Grand Rapids, Michigan, in the January 1, 2007 contract referenced in paragraph 36, above.

79. Count 11: Respondent failed to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for 929½ Sheridan, SW, Grand Rapids, Michigan, in the January 1, 2008 contract referenced in paragraph 36, above.

80. Respondent's failure to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within each contract or as an attachment to each contract, in each contract for each leasing transaction referenced in paragraphs 77 through 79, above, constitute three violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 12 through 16

81. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

82. 40 C.F.R. § 45.100 requires, among other things, that the lessor complete the

required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 45.113(b)(3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee or a statement that no such records are available.

83. Count 12: Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the contract for 516½ 4th, Grand Rapids, Michigan, in the March 1, 2008 contract referenced in paragraph 36, above.

84. Count 13: Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the contract for 725 Fulton, NW, Grand Rapids, Michigan, in the January 1, 2007 contract referenced in paragraph 36, above.

85. Count 14: Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the contract for 924 Sheridan, SW, Grand Rapids, Michigan, in the November 2, 2006 contract referenced in paragraph 36, above.

86. Count 15: Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the

contract for 926 Sheridan, SW, Grand Rapids, Michigan, in the June 14, 2007 contract referenced in paragraph 36, above.

87. Count 16: Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the contract for 929½ Sheridan, SW, Grand Rapids, Michigan, in the January 1, 2008 contract referenced in paragraph 36, above.

88. Respondent's failure to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing, or a statement that no such records exist, either within each contract or as an attachment to each contract, for each leasing transaction referenced in paragraphs 83 through 87, above, constitute five violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 17 through 20

89. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

90. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each 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. § 2696.

91. Count 17: Respondent failed to include 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. § 2696, either within the contract or as an attachment to the contract for 516½ 4th, Grand Rapids, Michigan, in the March 1, 2008 contract referenced in paragraph 36, above.

92. Count 18: Respondent failed to include 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. § 2696, either within the contract or as an attachment to the contract for 725 Fulton, NW, Grand Rapids, Michigan, in the January 1, 2007 contract referenced in paragraph 36, above.

93. Count 19: Respondent failed to include 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. § 2696, either within the contract or as an attachment to the contract for 924 Sheridan, SW, Grand Rapids, Michigan, in the November 2, 2006 contract referenced in paragraph 36, above.

94. Count 20: Respondent failed to include 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. § 2696, either within the contract or as an attachment to the contract for 929½ Sheridan, SW, Grand Rapids, Michigan, in the January 1, 2008 contract referenced in paragraph 36, above.

95. Respondent's failure to include 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. § 2696, either within each contract or as an attachment to each contract, for each leasing transactions referenced in paragraphs 91 through 94, above,

constitute four violations of 40 C.F.R § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 21 through 23

96. Complainant incorporates paragraphs 1 through 45 of this Complaint as if set forth in this paragraph.

97. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

98. Count 21: Respondent failed to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the contract for 516½ 4th, Grand Rapids, Michigan, in the March 1, 2008 contract referenced in paragraph 36, above.

99. Count 22: Respondent failed to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the contract for 725 Fulton, NW, Grand Rapids, Michigan, in the January 1, 2007 contract referenced in paragraph 36, above.

100. Count 23: Respondent failed to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the contract for 929½ Sheridan, SW, Grand Rapids, Michigan, in the January 1, 2008 contract referenced in paragraph 36, above.

101. Respondent's failure to include the signatures of the lessor and lessee certifying to the accuracy of their statements along with the dates of signature for each leasing transaction, in an attachment to the contracts to lease target housing, as referenced in paragraphs 98 through 100, above, constitute three violations of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Proposed Civil Penalty

102. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint as follows:

	<u>Count 1</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(1).....		\$1,550
	<u>Count 2</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(2).....		\$770
	<u>Count 3</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(3).....		\$260
	<u>Count 4</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(4).....		\$520
	<u>Count 5</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(5).....		\$520
	<u>Count 6</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(7).....		\$130
	<u>Count 7</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(1).....		\$1,550
	<u>Count 8</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(1).....		\$1,550
	<u>Count 9</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(2).....		\$770
	<u>Count 10</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(2).....		\$770

	<u>Count 11</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(2).....		\$770
	<u>Count 12</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$260
	<u>Count 13</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$260
	<u>Count 14</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$1,680
	<u>Count 15</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$1,680
	<u>Count 16</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$260
	<u>Count 17</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(4).....		\$520
	<u>Count 18</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(4).....		\$520
	<u>Count 19</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(4).....		\$3,220
	<u>Count 20</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(4).....		\$520
	<u>Count 21</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(6).....		\$130
	<u>Count 22</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(6).....		\$130
	<u>Count 23</u>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(6).....		\$130
Total Proposed Civil Penalty.....		\$18,470

In determining the amount of any civil penalty, Section 16 of TSCA 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, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

EPA calculates penalties by applying its Section 1018 - Disclosure Rule Enforcement Response Policy dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

As stated in paragraph 41, above, by letter dated May 21, 2009, EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of Section 1018 and that Section 1018 authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint, and if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents. The proposed penalty may be adjusted if Respondent

establishes a bona fide issue of his ability to pay or other affirmative defense relevant to the determination of any final penalty.

Rules Governing This Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Maria Gonzalez to receive any answer and subsequent legal documents that Respondent serves in this proceeding.

You may telephone Ms. Gonzalez at (312) 886-6630. Her address is:

Maria Gonzalez (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Penalty Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. Gonzalez and to:

Scott Cooper (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that he is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that he has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement.

To request an informal settlement conference, Respondent may contact Ms. Gonzalez at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.


Continuing Obligation to Comply

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to comply with TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

The EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Consent Order.

July 23, 2009
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

RECEIVED
JUL 23 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

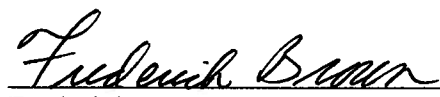
CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving Rich Punches, Grand Rapid, Michigan, was filed on July 23, 2009, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7001 0320 0006 0189 4175 to:

Mr. Rick Punches
5 Cummings Avenue, NW
Grand Rapids, Michigan 49534

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Maria Gonzalez, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. TSCA-05-2009-0010

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PROTECTION AGENCY