



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 08 2009

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 5165

Mr. Karl Nagy  
Owner  
1004 East Elm Tree Road  
Rossford, Ohio 43460

Re: In the Matter of Karl Nagy, Docket No: **TSCA-05-2009-0009**

Dear Mr. Nagy:

I have enclosed a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Karl Nagy 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 Boulevard, Chicago, Illinois 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. To request a conference, or if you have any questions about this matter, you may contact Ann Coyle, Associate Regional Counsel at (312) 886-2248.

Sincerely,

*Margaret M. Guerriero*  
for Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. TSCA-05-2009-0009  
 )  
Karl Nagy, ) Proceeding to Assess a Civil Penalty  
Rossford, Ohio ) Under Section 16(a) of the Toxic Substances  
 ) Control Act, 15 U.S.C. § 2615(a)  
Respondent, )  
\_\_\_\_\_  
)

**RECEIVED**  
JUL 08 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**Complaint**

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, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Karl Nagy, a sole proprietor with a place of business located at 1004 East Elm Tree Road, Rossford, Ohio 43460.

**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 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 promulgated regulations codified at 40 C.F.R. Part 745, Subpart F, 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. § 745.100 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.

11. 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.

12. 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), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

13. 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**

14. At all times relevant to this Complaint, Respondent owned single-family dwellings at 403 Tacoma, Defiance, Ohio, and 3549 Terrace Drive, 448 Potter Street, 1522 West Alexis Road, and 287 East Lake Street, all in Toledo, Ohio, and a two-unit dwelling (duplex) at 1508 and 1510 Freedom, Toledo, Ohio (Respondent's properties).

15. Respondent's properties were constructed prior to 1978.

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

17. On July 27, 1999, the City of Toledo Department of Health and Environment sent Respondent a Notice of Violation (NOV) and Inspection Report Form ("Environmental Lead Inspection Report" or ELIR), which identified lead-based paint hazards at 448 Potter Street, Toledo, Ohio. These hazards were identified through an Ohio Department of Health investigation of a lead-poisoned child at that address. The NOV described the lead-based paint hazards and violations of the Toledo Municipal Code and required Respondent to abate the identified lead-based paint hazards. The first page of the ELIR describes Respondent's obligations under federal law to comply with the Disclosure Rule, including his obligation to: disclose the presence of any known lead-based paint or lead-based paint hazards at the property; provide lessees with any lead hazard evaluation reports for the property available to the lessor, including the ELIR, prior to new lessees becoming obligated under a lease; provide lessees with a copy of EPA's lead disclosure pamphlet; and include standard lead warning language in his leases.

18. On May 30, 2000, the Toledo Lucas County Health Department sent Respondent a "Second and Final Notice for 448 Potter St., Toledo, Ohio 43605" and enclosed a Second and Final Notice of Violation (SFNOV) and the July 27, 1999, ELIR. The SFNOV reiterated the violations identified in the July 27, 1999, NOV and required the same lead hazard abatement.

19. For the property located at 403 Tacoma, Defiance, Ohio, Parcel B014145008800, publicly available documents from April 29, 2009, identify Karl Nagy as the grantee.

20. For the property located at 403 Tacoma, Defiance, Ohio, Parcel B014145008800, publicly available documents from April 29, 2009, state the value of the property is approximately \$54,540.

21. For the property located at 3549 Terrace Drive, Toledo, Ohio, Parcel 12-17041, publicly available documents from April 29, 2009, identify Karl Nagy as the grantee.
22. For the property located at 3549 Terrace Drive, Toledo, Ohio, Parcel 12-17041, publicly available documents from April 29, 2009, state the value of the property in 2008 was approximately \$39,700.
23. For the property located at 448 Potter Street, Toledo, Ohio, Parcel 12-26427, publicly available documents from April 29, 2009, identify Karl Nagy as the grantee.
24. For the property located at 448 Potter Street, Toledo, Ohio, Parcel 12-26427, publicly available documents from April 29, 2009, state the value of the property in 2008 was approximately \$61,700.
25. For the property located at 1522 West Alexis Road, Toledo, Ohio, Parcel 23-38027, publicly available documents from April 29, 2009, identify Karl Nagy as the grantee.
26. For the property located at 1522 West Alexis Road, Toledo, Ohio, Parcel 23-38027, publicly available documents from April 29, 2009, state the value of the property in 2008 was approximately \$72,300.
27. For the property located at 287 East Lake Street, Toledo, Ohio, Parcel 07-09901, publicly available documents from April 29, 2009, identify Karl Nagy as the grantee.
28. For the property located at 287 East Lake Street, Toledo, Ohio, Parcel 07-09901, publicly available documents from April 29, 2009, state the value of the property in 2008 was approximately \$46,300.
29. The dwelling located on Parcel 03-14837, has two residential dwelling units, with street addresses 1508 and 1510 Freedom Street, Toledo, Ohio.

30. For the property located at Parcel 03-14837 in Toledo, Ohio, publicly available documents from April 29, 2009, identify 1508 Freedom Street as the address and Karl Nagy as the grantee.

31. For the property located at Parcel 03-14837 in Toledo, Ohio, publicly available documents from April 29, 2009, identify 1508 Freedom Street as the address and state the value of the property in 2008 was approximately \$43,600.

32. On the following dates, Respondent, either directly or through his authorized agent, entered into the following seven written lease agreements (contracts) with individuals for the lease of Respondent's single-family dwellings and duplex:

<b>Address</b>	<b>Date of Lease</b>
403 Tacoma, Defiance, Ohio	October 27, 2006
1508 Freedom Street, Toledo, Ohio	November 20, 2007
3549 Terrace Drive, Toledo, Ohio	February 24, 2008
448 Potter Street, Toledo, Ohio	April 1, 2008
1522 West Alexis Road, Toledo, Ohio	April 10, 2008
287 East Lake Street, Toledo, Ohio	April 29, 2008
1510 Freedom Street, Toledo, Ohio	May 13, 2008

33. Each of the seven contracts referenced in paragraph 32, above, covered a term of occupancy greater than 100-days.

34. Between October 27, 2006, and May 13, 2008, Respondent offered for lease his single-family dwellings and duplex, and individuals entered into contracts on the dates listed in paragraph 32, above, to lease those dwellings.

35. Respondent is a “lessor,” as defined in 40 C.F.R. § 745.103, because he offered the target housing referenced in paragraph 32, above, for lease.

36. Each individual who signed a lease to pay rent in exchange for occupancy of a dwelling, referenced in paragraph 32, above, became a “lessee” as defined in 40 C.F.R. § 745.103.

37. On June 1, 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, EPA asked Respondent to submit specific financial documents.

38. On June 4, 2009, Respondent received the pre-filing notice letter referred to in paragraph 37, above. Respondent did not reply to the letter.

#### Counts 1 through 7

39. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

40. 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.

41. Count 1: Respondent failed to include, either within the contract or as an attachment to the contract dated October 27, 2006, for 403 Tacoma, Defiance, Ohio, a Lead Warning Statement.

42. **Count 2:** Respondent failed to include, either within the contract or as an attachment to the contract dated November 20, 2007, for 1508 Freedom Street, Toledo, Ohio, a Lead Warning Statement.

43. **Count 3:** Respondent failed to include, either within the contract or as an attachment to the contract dated February 24, 2008, for 3549 Terrace Drive, Toledo, Ohio, a Lead Warning Statement.

44. **Count 4:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 1, 2008, for 448 Potter Street, Toledo, Ohio, a Lead Warning Statement.

45. **Count 5:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 10, 2008, for 1522 West Alexis Road, Toledo, Ohio, a Lead Warning Statement.

46. **Count 6:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 29, 2008, for 287 East Lake Street, Toledo, Ohio, a Lead Warning Statement.

47. **Count 7:** Respondent failed to include, either within the contract or as an attachment to the contract dated May 13, 2008, for 1510 Freedom Street, Toledo, Ohio, a Lead Warning Statement.

48. Respondent's failure to include, either within each contract or as an attachment, a Lead Warning Statement for each leasing transaction referred to in paragraphs 41 through 47, above, constitutes seven violations of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 8 through 14**

49. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

50. 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.

51. **Count 8:** Respondent failed to include, either within the contract or as an attachment to the contract dated October 27, 2006, for 403 Tacoma, Defiance, Ohio, 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.

52. **Count 9:** Respondent failed to include, either within the contract or as an attachment to the contract dated November 20, 2007, for 1508 Freedom Street, Toledo, Ohio, 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.

53. **Count 10:** Respondent failed to include, either within the contract or as an attachment to the contract dated February 24, 2008, for 3549 Terrace Drive, Toledo, Ohio, 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.

54. **Count 11:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 1, 2008, for 448 Potter Street, Toledo, Ohio, 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.

55. **Count 12:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 10, 2008, for 1522 West Alexis Road, Toledo, Ohio, 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.

56. **Count 13:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 29, 2008, for 287 East Lake Street, Toledo, Ohio, 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.

57. **Count 14:** Respondent failed to include, either within the contract or as an attachment to the contract dated May 13, 2008, for 1510 Freedom Street, Toledo, Ohio, 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.

58. Respondent's failure to include, either within each contract or as an attachment, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased or a lack of knowledge of such presence for each leasing transaction referred to in paragraphs 51 through 57, above, constitutes seven violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

#### **Counts 15 through 21**

59. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

60. 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)(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.

61. **Count 15:** Respondent failed to include, either within the contract or as an attachment to the contract dated October 27, 2006, for 403 Tacoma, Defiance, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

62. **Count 16:** Respondent failed to include, either within the contract or as an attachment to the contract dated November 20, 2007, for 1508 Freedom Street, Toledo, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

63. **Count 17:** Respondent failed to include, either within the contract or as an attachment to the contract dated February 24, 2008, for 3549 Terrace Drive, Toledo, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

64. **Count 18:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 1, 2008, for 448 Potter Street, Toledo, Ohio, a list of any

records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

65. **Count 19:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 10, 2008, for 1522 West Alexis Road, Toledo, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

66. **Count 20:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 29, 2008, for 287 East Lake Street, Toledo, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

67. **Count 21:** Respondent failed to include, either within the contract or as an attachment to the contract dated May 13, 2008, for 1510 Freedom Street, Toledo, Ohio, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available.

68. Respondent's failure to include, either within each contract or as an attachment, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee, or a statement that no such records are available, for each leasing transaction referred to in paragraphs 61 through 67,

above, constitutes seven violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 22 through 28**

69. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

70. 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 (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

71. **Count 22:** Respondent failed to include, either within the contract or as an attachment to the contract dated October 27, 2006, for 403 Tacoma, Defiance, Ohio, 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 required under 15 U.S.C. § 2696.

72. **Count 23:** Respondent failed to include, either within the contract or as an attachment to the contract dated November 20, 2007, for 1508 Freedom Street, Toledo, Ohio, 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 required under 15 U.S.C. § 2696.

73. **Count 24:** Respondent failed to include, either within the contract or as an attachment to the contract dated February 24, 2008, for 3549 Terrace Drive, Toledo, Ohio, 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 required under 15 U.S.C. § 2696.

74. **Count 25:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 1, 2008, for 448 Potter Street, Toledo, Ohio, 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 required under 15 U.S.C. § 2696.

75. **Count 26:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 10, 2008, for 1522 West Alexis Road, Toledo, Ohio, 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 required under 15 U.S.C. § 2696.

76. **Count 27:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 29, 2008, for 287 East Lake Street, Toledo, Ohio, 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 required under 15 U.S.C. § 2696.

77. **Count 28:** Respondent failed to include, either within the contract or as an attachment to the contract dated May 13, 2008, for 1510 Freedom Street, Toledo, Ohio, 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 required under 15 U.S.C. § 2696.

78. Respondent's failure to include, either within each contract or as an attachment, 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 required under 15 U.S.C. § 2696 for each leasing transaction referred to in paragraphs 71 through 77, above, constitutes seven violations of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 29 through 35**

79. Complainant incorporates paragraphs 1 through 38 of this Complaint as if set forth in this paragraph.

80. 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.

81. **Count 29:** Respondent failed to include, either within the contract or as an attachment to the contract dated October 27, 2006, for 403 Tacoma, Defiance, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

82. **Count 30:** Respondent failed to include, either within the contract or as an attachment to the contract dated November 20, 2007, for 1508 Freedom Street, Toledo, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

83. **Count 31:** Respondent failed to include, either within the contract or as an attachment to the contract dated February 24, 2008, for 3549 Terrace Drive, Toledo, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

84. **Count 32:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 1, 2008, for 448 Potter Street, Toledo, Ohio, the signatures

of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

85. **Count 33:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 10, 2008, for 1522 West Alexis Road, Toledo, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

86. **Count 34:** Respondent failed to include, either within the contract or as an attachment to the contract dated April 29, 2008, for 287 East Lake Street, Toledo, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

87. **Count 35:** Respondent failed to include, either within the contract or as an attachment to the contract dated May 13, 2008, for 1510 Freedom Street, Toledo, Ohio, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

88. Respondent's failure to include, either within each contract or as an attachment, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures for each leasing transaction referred to in paragraphs 81 through 87, above, constitutes seven 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**

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

<b>Counts 1-7: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)</b>	
Count 1.....	\$1,550
Count 2.....	\$6,450
Count 3.....	\$1,550
Count 4.....	\$8,036
Count 5.....	\$1,550
Count 6.....	\$6,450
Count 7.....	\$1,550
<b>Counts 8-14: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2)</b>	
Count 8.....	\$770
Count 9.....	\$5,160
Count 10.....	\$770
Count 11.....	\$6,450
Count 12.....	\$770
Count 13.....	\$5,160
Count 14.....	\$770
<b>Counts 15-21: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3)</b>	
Count 15.....	\$260
Count 16.....	\$1,680
Count 17.....	\$260
Count 18.....	\$2,100
Count 19.....	\$260
Count 20.....	\$1,680
Count 21.....	\$260
<b>Counts 22-28: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4)</b>	
Count 22.....	\$520
Count 23.....	\$3,220
Count 24.....	\$520
Count 25.....	\$4,025
Count 26.....	\$520
Count 27.....	\$3,220
Count 28.....	\$520
<b>Counts 29-35: 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6)</b>	
Count 29.....	\$130
Count 30.....	\$640
Count 31.....	\$130
Count 32.....	\$800
Count 33.....	\$130
Count 34.....	\$640
Count 35.....	\$130
<b>Total Proposed Civil Penalty .....</b>	<b>\$66,658</b>

90. 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, effect 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.

91. 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.

92. As stated in paragraph 37, above, by letter dated June 1, 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.

Respondent did not claim an inability to pay a penalty and has provided no facts or information which would indicate that the penalty should be adjusted for financial or other factors related to the alleged violation.

### **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, Illinois 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 Ann Coyle, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Coyle at (312) 886-2248. Her address is:

Ann Coyle (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 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. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 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. Coyle and to:

Christine Anderson (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 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. Coyle 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

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondent 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 Final Order and it is filed with the Regional Hearing Clerk.

7/6/09  
Date

*Margaret M. Guerriero*  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**RECEIVED**  
JUL 08 2009

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint involving Mr. Karl Nagy, was filed on July 8, 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 5165, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Section 1018 Disclosure Rule Enforcement Response Policy" to:

Mr. Karl Nagy  
Owner  
1004 East Elm Tree Road  
Rossford, Ohio 43460

and forwarded intra-Agency copies to:

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

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

Docket No. TSCA-05-2009-0009

**RECEIVED**  
JUL 08 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY