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**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of: : **U.S. EPA Docket No. TSCA-03-2018-0063**

Gregory Mull :
77 Mull Road :
Middleburg, PA 17842 :

Respondent :

U.S. EPA-REGION 3-RHC
FILED-11 JUL 2018 PM 12:00

**ANSWER TO ADMINISTRATIVE COMPLAINT , AFFIRMATIVE
DEFENSES, AND REQUEST FOR HEARING**

Respondent Gregory Mull offers the following Answers to the Administrative Complaint issued by US EPA in the above-captioned matter:

I. JURISDICTION

1. This paragraph sets forth conclusions of law to which no response is required.

II. STATUTORY AUTHORITY

2. This paragraph sets forth conclusions of law to which no response is required.
3. No response is required because the regulation speaks for itself.

III. DEFINITIONS AND APPLICABLE REGULATIONS

4-17. No response is required to Paragraphs 4-17 because the regulations cited speak for themselves.

IV. GENERAL ALLEGATIONS

All references to “target housing” are considered legal conclusions to which no response is required.

18. This paragraph sets forth conclusions of law to which no response is required. By way of further response, Respondent admits that it leased the referenced three properties to various tenants.

19. Respondent admits the allegations in this paragraph.

20. Respondent admits that each of the “Mull Properties” was constructed prior to 1978. The remainder of this paragraph sets for legal conclusions to which no response is required.

21. Respondent admits only that the Mull Properties were inhabited by residential tenants, that the units were not leased to either elderly persons or persons with disabilities, and that none of the units were constructed as a one- room home without separate bedroom. All other allegations are legal conclusions to which no response is required.

22. Respondent admits only that at the time of the leases which are the subject of this Complaint, there had not been a finding of no lead-based paint in any of the units, as a result of an inspection by an inspector certified under a federal or federally accredited State government agency. To the extent this paragraph characterizes 40 CFR 745.103, that regulation speaks for itself and no response is required

23. Respondent admits only that it commenced leasing the referenced units to tenants, beginning at the dates noted. The remaining allegations are legal conclusions to which no response is required.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

All references to “target housing” are considered legal conclusions to which no response is required.

24. Respondent lacks sufficient information to form a belief as to the truth of the allegations in this paragraph. Respondent admits only that during a 2014 court proceeding brought by Respondent to evict the tenant at 210 Lenker Ave. for non-payment of rent, and damage to the unit, the tenant orally alleged that her child’s blood had been tested and had showed elevated level of lead.

25. Respondent lacks sufficient information to form a belief as to the truth of the allegations in this paragraph.

26. Respondent lacks information to form a belief as to the truth of the allegations regarding the content of any tipster declaration or documents attached thereto.

27. Respondent admits the allegations in this paragraph.

28. Respondent admits the allegations in the first sentence. With regard to the characterization in the second sentence as to what was said by Respondent during the referenced phone call, based on Respondent’s recollection of this conversation which took place over 46 months ago Respondent admits item #1, denies the remaining allegations as stated, and only admits recollection of having stated the following:

-That he was in the process of evicting the Reinard family for failure to pay rent and for damages to the unit;

-That Mrs. Reinard had stated in court during the eviction proceeding that her child had elevated blood lead levels;

-That Mrs. Reinard had told him at some point that she was going to tell EPA that no lead disclosure was included with the lease;

- That Respondent is aware of lead disclosure and other requirements applicable to HUD subsidized housing, that he has leased housing under that program and complied with requirements, and that he was not previously aware of the lead hazard disclosure requirements for general private housing.

29. Respondent admits the allegations in this paragraph.
30. Respondent admits the allegations in this paragraph.
31. Respondent admits the allegations in the first sentence. Based on recollection of the conversation which occurred 35 months ago, Respondent also admits the allegations in the second sentence but responds further that he also described the painting work as periodic maintenance that he personally carried out on painted wooden window frames and boxes in order to assure that such surfaces did not peel.
32. Based on recollection of the conversation occurring approximately 35 months ago, Respondent admits the allegations in this paragraph, regarding what was told to the inspector.

33. Respondent admits the allegations in this paragraph but responds further that there were no lead records or reports in his possession at the time of the referenced leases of the "Mull Properties" and therefore no basis for any list thereof.

Counts 1-5

All responses to "target housing" are considered legal conclusions to which no response is required.

34. The responses to paragraphs 1-33 are incorporated herein by reference.
35. Respondent admits only that it entered into Lease Transaction #1 on July 29, 2013, for the rental unit at 16 Vine St. Apt. C in Kemar PA. Other allegations in this paragraph are legal conclusions to which no response is required.
36. Respondent admits the allegations of this paragraph.
37. Respondent admits only that the lease was month to month with no specific termination date. Remaining allegations are legal conclusions to which no response is required.
38. This paragraph sets forth legal conclusions to which no response is required. Respondent admits only that the lease was a new month to month lease and not a renewal of a previous lease.
39. The first sentence sets forth a legal conclusion to which no response is required. Respondent admits only that the at the time of the lease it did not include any lead warning statement. The allegations in the second sentence are admitted.
40. In the first sentence, Respondent admits only that at the time of the lease, it did not include any statement disclosing lead hazards or indicating no knowledge of lead

hazards. The reference in the first sentence to 40 CFR 745.113(b)(2) is a legal conclusion to which no response is required. Respondent also admits the allegations in the second sentence of this paragraph.

41. In the first sentence, Respondent admits only that at the time of the lease it did not include any statement regarding availability of records pertaining to lead. The reference in the first sentence to 40 CFR 745.113(b)(4) is a legal conclusion to which no response is required. Respondent also admits the allegations in the second sentence of this paragraph.

42. In the first sentence, Respondent admits only that at the time of the lease it did not include any acknowledgement of information receipt by tenant. The reference in the first sentence to 40 CFR 745.113(b)(4) is a legal conclusion to which no response is required. The reference in the second sentence to 15 USC 2696 is a legal conclusion to which no response is required. Respondent admits the remaining allegations in the second sentence, but further responds that the lead hazard pamphlet was in fact provided to the tenant along with the subsequent disclosure statement.

43. The reference in the first sentence to 40 CFR 745.113(b)(6) is a legal conclusion to which no response is required. Respondent admits only that at the time of the lease, it did not include any certification of accuracy. With respect to the second sentence Respondent admits the allegations but responds further that the certification of accuracy was signed by the female tenant who initialed the acknowledgment in item (c) of the disclosure form.

44-48. The allegations in these paragraphs are legal conclusions to which no response is required.

Counts 6-10

All references to “target housing are considered legal conclusions to which no response is required.

49. Responses to Paragraphs 1-48 are incorporated by reference herein.

50. Respondent admits only that it leased unit #2 at the 210 Lenker Ave. property to tenants on November 19, 2013 (referred to in the Complaint as Lease Transaction #2). Remaining allegations are legal conclusions to which no response is required.

51. With respect to the first sentence, Respondent admits only that the tenant household included an adult male and female and two children. Respondent lacks sufficient information to admit or deny the ages of the two children in the tenant household under Lease Transaction #2, or whether any individual was a tipster. With respect to the second sentence Respondent lacks sufficient information to admit or deny whether or when the youngest child was diagnosed with an elevated blood lead level (EBL);

52. Respondent admits only that Lease Transaction #2 was a month to month lease with no limitation on renewal. The remaining allegations are legal conclusions to which no response is required.

53. This paragraph contains legal conclusions to which no response is required.

54. Respondent admits only that he failed to provide a lead hazard information pamphlet at the time of lease execution. The other allegations are legal conclusions to which no response is required.

55. Respondent admits only that he failed to provide any lead warning statement at the time of lease execution. The other allegations are legal conclusions to which no response is required.

56. Respondent admits only that he failed to provide any lead disclosure statement at the time of lease execution. The other allegations are legal conclusions to which no response is required.

57. Respondent admits only that he failed to provide any statement regarding availability of records, at the time of lease execution. The other allegations are legal conclusions to which no response is required.

58. Respondent admits only that he failed to provide any certification of accuracy at the time of lease execution. The other allegations are legal conclusions to which no response is required.

59-63. The allegations in these paragraphs are legal conclusions to which no response is required.

Counts 11-15

All references to “target housing” are considered legal conclusions to which no response is required.

64. The responses to paragraphs 1-63 are incorporated herein by reference.

65. Respondent admits only that it leased Unit #2 of the 210 Lenker Ave. property to tenants by lease dated July 1, 2017.(referred to in the Complaint as Lease Transaction #3). Respondent lacks sufficient information to admit or deny the allegation pertaining to a child who had previously resided there during Lease Transaction #2. Other allegations are legal conclusions to which no response is required.

66. Respondent admits the allegations in this paragraph.

67. Respondent admits only that Lease Transaction #3 was a month to month lease with no specific termination date. Other allegations in this paragraph are legal conclusions to which no response is required.
68. Respondent admits only that Lease Transaction #3 began on July 1, 2017, and was not a renewal of any previous lease. Other allegations in this paragraph are legal conclusions to which no response is required.
69. Respondent admits the allegations in this paragraph.
70. In the first sentence, Respondent admits only that at the time of the lease, it did not include any statement disclosing lead hazards or indicating no knowledge of lead hazards. Remaining allegations in the first sentence are legal conclusions to which no response is required. Respondent also admits the allegations in the second sentence of this paragraph.
71. In the first sentence, Respondent admits only that at the time of lease execution, it did not include any statement regarding availability of records pertaining to lead. Remaining allegations in the first sentence are legal conclusion to which no response is required. Respondent admits the allegations in the second sentence of this paragraph.
72. In the first sentence, Respondent admits only that at the time of the lease it did not include any acknowledgement of information receipt by tenant. The remaining allegations in this sentence are legal conclusions to which no response is required. In the second sentence, Respondent admits only that an acknowledgement statement was included with the disclosure form subsequently appended to the lease, and that the acknowledgment form did not indicate, via tenant initials, receipt of any lead hazard information pamphlet. Respondent states further that a pamphlet was in fact given to

tenant at the same time as the disclosure form. The remainder of the allegations in the second sentence are legal conclusions to which no response is required.

73—In the first sentence, Respondent admits only that at the time of lease execution, it did not include any certification of accuracy. Remaining allegations in this sentence are legal conclusions to which no response is required. In the second paragraph, Respondent admits the allegations in the second sentence of this paragraph, but responds further that the certification of accuracy in the subsequent disclosure statement was signed by the male tenant who initialed the acknowledgement of information receipt in item (c) of the disclosure statement.

74-78. The allegations in these paragraphs are legal conclusions to which no response is required.

CIVIL PENALTY

The first four non-numbered paragraphs are legal conclusions to which no response is required.

Penalty Calculation Explanation

- 1(A). This paragraph sets forth legal conclusions to which no response is required.
- 1(B). This paragraph sets forth legal conclusions to which no response is required.
- 1(C). This paragraph sets forth legal conclusions to which no response is required.
- 1(D). This paragraph sets forth legal conclusions to which no response is required.
- 1(E). This paragraph sets forth legal conclusions to which no response is required.

1(F) This paragraph sets for legal conclusions to which no response is required.

2(A). Respondent admits only that at the time of execution of one of the leases to a family which included children, it did not include any statement disclosing lead hazards or indicating no knowledge of lead hazards. Respondent lacks sufficient information to form a belief as to the truth of the allegation pertaining to the age of children in any of the rental units. The remaining allegations in this paragraph are legal conclusions to which no response is required.

2(B) The allegations in the first two sentences are legal conclusions to which no response is require. With respect to the third sentence, Respondent admits the allegations.

2C) With respect to the third sentence, Respondent admits that no disclosures were made at the time of Lease Transaction #1, but responds further that disclosures were made subsequent to execution of the lease. The remaining allegations in this paragraph are legal conclusions to which no response is required.

LEGAL ARGUMENTS AND DEFENSES

FIRST DEFENSE

79. The explanation of severity, required by 40 CFR 22.14(a)(4)(ii), which is set forth in Section V (Civil Penalty) of the Complaint, reaches conclusions about the gravity of alleged violations in Counts 6-10, which are arbitrary and capricious; because they do not consider the actual potential for harm or actual potential gravity of harm, based on any actual conditions at Unit 2 of the 210 Lenker rental property during the time of “Lease

Transaction #2. According to the executed lease, (previously provided to EPA) such conditions included recent previous application of a fresh coat of paint over all painted surfaces, and new carpet.

80. Although no specific penalty amount is stated, the conclusions concerning gravity correspond to specific penalty amounts under the EPA Penalty Policy, and therefore constitute a de facto proposed penalty.

81. The de facto proposed penalties for counts 6-10 are therefore arbitrary and capricious, and an abuse of discretion.

SECOND DEFENSE

82. The explanation of severity, required by 40 CFR 22.14(a)(4)(ii), which is set forth in Section V (Civil Penalty) of the Complaint, reaches conclusions about the gravity of alleged violations in Counts 11-15, which are arbitrary and capricious; because they do not consider the actual potential for harm or actual potential gravity of harm, based on any actual conditions at Unit 2 of the 210 Lenker rental property during the time of Lease #3. According to the executed lease, (previously provided to EPA) such conditions included recent previous application of a fresh coat of paint over all painted surfaces., and carpet cleaning.

83. Although no specific penalty amount is stated, the conclusions concerning gravity correspond to specific penalty amounts under the EPA Penalty Policy matrix, and therefore constitute a de factor proposed penalty.

84. The de facto proposed penalty for counts 11-15 is therefore arbitrary and capricious, and an abuse of discretion.

THIRD DEFENSE

85. The TSCA statute imposes a maximum penalty of \$16,000 (assuming inflation adjustment) per violation for lead disclosure requirements. It was not intended by Congress that EPA assess a penalty of up to \$16,000 for failure to disclose the potential presence of lead hazard, in addition to a penalty of up to \$16,000 for each of the specific components of the required disclosure, plus a penalty of up to \$16,000 for each aspect of the documentation required for demonstration of compliance with each of the disclosure components. Such an approach automatically converts the alleged failure to disclose lead hazards into at least 6 violations worth up to \$16,000 each. To the extent that EPA's complaint reserves the right to seek such penalties, and to the extent EPA's civil penalty severity explanation or ultimate specific penalty assessment in this matter utilizes this duplicative approach, it is arbitrary and capricious and an abuse of discretion.

FOURTH DEFENSE

86. The gravity of alleged disclosure deficiencies in a lease context, is significantly mitigated in situations where the landlord has voluntarily provided fresh painting of painted surfaces and cleaning of carpets. Such measures significantly reduce the risks of lead dust and of infant ingestion of paint chips, which are often found in poorly maintained rental units, and for which abatement is not legally required. The leases which are the subject of this Complaint all indicated that Respondent provided these

voluntary protective measures. Thus, the potential for serious damage to human health due to alleged failure to disclose the presence and hazards of lead, should be considered minor for all three rental units, regardless of the presence of any children, and the "Extent" factor should be considered "Minor".

FIFTH DEFENSE

87. EPA'S allegations are barred by laches, because they pertain in part, to leases executed in 2013.

RESERVATION OF RIGHT TO AMEND ANSWER AND ADD AFFIRMATIVE DEFENSES

91. Respondent reserves the right to amend this Answer and to add further affirmative defenses, including those which may become apparent through discovery and development of this case.

REQUEST FOR HEARING

92. Respondent hereby requests an Administrative Hearing on all issues raised in the Complaint, in accordance with **40 CFR 22.15**.

REQUEST FOR SETTLEMENT CONFERENCE

94. A settlement conference is requested.

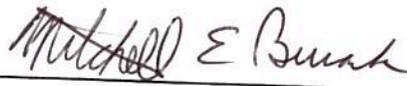
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on June 9, 2018, I caused an original and one true and correct copy of the Answer to be served on the Regional Hearing Clerk, via Federal Express overnight delivery at:

Regional Hearing Clerk
Mail Code 3RC00
US EPA Region III
1650 Arch St.
Philadelphia, PA 19103-2029

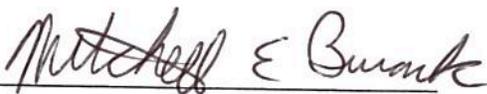
And one true and correct copy of the Answer by
Federal Express overnight delivery to:

Donzetta Thomas
Senior Assistant Regional Counsel (3RC50)
USEPA Region III
1650 Arch St.
Philadelphia, PA 19103-2029



Mitchell E. Burack
Counsel for Respondent.

Respectfully submitted by:


Mitchell E. Burack

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Counsel and recipient of Service for Respondent Gregory Mull.