



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
NEW ENGLAND REGION

September 30, 2019

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square  
Boston, Massachusetts 02109

RECEIVED

SEP 30 2019

EPA ORC  
Office of Regional Hearing Clerk

Re: Howard Gross, Respondent  
**Docket No. TSCA-01-2019-0050**

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the administrative Complaint in this matter.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Timothy M. Conway".

Timothy M. Conway  
Senior Enforcement Counsel

Enclosures

cc: Jordan Alves, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED  
SEP 30 2019  
EPA ORC  
Office of Regional Hearing Clerk

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In the Matter of: ) )  
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) )  
Howard Gross ) )  
466 Central Avenue, Suite 9 ) )  
Dover, New Hampshire 03820 ) )  
) )  
Respondent ) )  
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) )  
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**ADMINISTRATIVE COMPLAINT  
AND  
NOTICE OF  
OPPORTUNITY FOR HEARING**

Docket No. TSCA-01-2019-0050

Proceeding under Section 16(a) of the  
Toxic Substances Control Act,  
15 U.S.C. § 2615(a)

**I. STATEMENT OF AUTHORITY**

1. Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), issues this administrative Complaint and Notice of Opportunity for Hearing under Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

**II. NATURE OF THE ACTION**

2. This Complaint notifies Howard Gross (“Respondent”) that EPA has determined that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Disclosure of Known Lead Based Paint and/or Lead Based Paint Hazards Upon Sale or Lease of Residential Property,” as set forth at 40

C.F.R. Part 745, Subpart F (the “Disclosure Rule”). EPA seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by EPA of civil and/or criminal penalties.

### **III. STATUTORY AND REGULATORY BASIS**

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead based paint (“LBP”), and that the ingestion of lead from deteriorated or abraded LBP is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of LBP hazards is taken into account in the rental of homes and apartments.

4. In 1996, EPA promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subparts E and F.

5. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act, the Disclosure Rule, and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). See 40 C.F.R. § 745.103.

6. Pursuant to 40 C.F.R. § 745.103, “lessor” means any entity that offers target housing for lease, rent, or sublease.

7. The LBP Disclosure Rule regulations set forth at 40 C.F.R. Part 745, Subpart F, require that the lessors of target housing must take the following actions, among others, prior to lessees becoming obligated to lease target housing:

- a. Provide to lessees an EPA-approved lead hazard information pamphlet;

- b. Disclose to lessees the presence of any known LBP and/or LBP hazards in the target housing being leased (“Disclosure Form”);
  - c. Include, either within or as an attachment to the lease contract, a Lead Warning Statement; and
  - d. Provide lessees with any records or reports available to the lessor pertaining to LBP and/or LBP hazards in the target housing being leased.
8. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), each failure to comply with a requirement of the Disclosure Rule is a violation of Section 409 of TSCA.
9. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of Section 409 of TSCA shall be liable to the United States for a civil penalty.
10. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Pursuant to the Civil Penalties Inflation Adjustment Act of 2015, 81 Fed. Reg. 41465 (June 27, 2016), and 40 C.F.R. Part 19, violations that occurred on or after November 2, 2015, and assessed on or after February 6, 2019, are subject to penalties up to \$17,834 per violation. See also 84 Fed. Reg. 2056 (February 6, 2019), and 84 Fed. Reg. 5955 (February 25, 2019).

#### **IV. GENERAL ALLEGATIONS**

11. Respondent, Howard Gross, owns and manages one residential building in Somersworth, New Hampshire.
12. At the time of the violations alleged in this Complaint, Respondent owned and offered for lease a residential property at 32 Prospect Street in Somersworth, New Hampshire.

13. On September 1, 2018, the adults of a family of seven, with five children, including a one-year old and an expectant mother (“Lessee Family”), entered into an agreement for lease with Respondent, and moved into 32 Prospect Street, Somersworth, New Hampshire, hereinafter referred to as “the Property”.

14. Pursuant to 40 C.F.R. § 745.103, Respondent was and is the “lessor” of the Property.

15. The Property is target housing as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the Property does not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)).

16. In January 2019, EPA received a complaint from a member of the Lessee Family at the Property in which he alleged that two of the Lessee Family children, ages 1, and two-weeks old, had elevated blood lead levels. According to the Lessee Family member, prior to moving into the Property in September 2018, the Lessee Family had lived in a smaller home built in 1990, which would not likely have contained lead paint.

17. In February 2019, Respondent, through counsel, admitted to EPA that Respondent was not aware of his obligations to provide a lead paint pamphlet and lead paint disclosure form to the Lessee Family.

18. On March 1, 2019, EPA conducted an inspection at Respondent’s Dover, New Hampshire office to evaluate Respondent’s compliance with EPA’s Disclosure Rule. During the inspection, the EPA inspector explained the requirements of EPA’s Lead Disclosure and RRP Rules in detail, and provided Respondent a copy of EPA-Region 1’s Compliance Assistance package for lead paint laws.

19. During the 2019 inspection, Respondent was issued a notice of inspection from EPA.

Based upon Complainant's review of information and documents obtained from Respondent, statements from the Lessee Family and EPA's subsequent investigations, EPA has identified the following violations of the Act and the Disclosure Rule.

## V. VIOLATIONS

### **COUNT I: Failure to Provide Lessee with an EPA-Approved Lead Hazard Information Pamphlet**

20. Complainant re-alleges Paragraphs 1 through 19.

21. Pursuant to 40 C.F.R. § 745.107(a)(1), before a lessee is obligated under a contract to lease target housing, a lessor must provide the lessee with an EPA-approved lead hazard information pamphlet entitled "Protect Your Family from Lead in Your Home" or an equivalent pamphlet that has been approved for use by EPA.

22. Respondent did not provide an EPA-approved pamphlet to the Lessee Family at the Property, before the Lessee Family was obligated under a contract to lease said target housing.

23. During the 2019 Inspection, Respondent admitted to EPA that he had not provided the Lessee Family of the Property an EPA-approved pamphlet before they were obligated under a contract to lease the Property.

24. Accordingly, Respondent's failure to provide an EPA-approved pamphlet to the lessees of target housing before the lessees became contractually obligated to lease said housing constitutes a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

### **COUNT II – Failure to Include the Lead Warning Statement**

25. Complainant re-alleges Paragraphs 1 through 24.

26. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include as an attachment or within the contract a Lead Warning Statement with specific language pursuant to the regulation.

27. During the 2019 Inspection, Respondent admitted to EPA that the contract to lease the Property to the Lessee Family did not include the Lead Warning Statement. Accordingly, Respondent's failure to include a Lead Warning Statement in or as an attachment to the contract to lease the Property to the Lessee Family constitutes a violation of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

**COUNT III – Failure to Provide Statement and Disclosure**

28. Complainant incorporates by reference Paragraphs 1 through 27.

29. Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or the lead-based paint hazards, such as the basis for the determination that lead-based paint, and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

30. The contract to lease the Property to the Lessee Family did not include either such a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Property being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, or a disclosure of any additional information available concerning the known lead-based paint and/or the lead-based paint hazards, such as the basis for the determination that lead-based paint, and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

31. Respondent's failure to include the statement or disclosure referenced in the paragraph immediately above constitutes a violation of 40 C.F.R. § 745.113(b)(2) and Section 409 of TSCA.

**COUNT IV – Failure to Provide Lessees Any Records or Reports Available Pertaining to Lead-Based Paint and/or Lead-Based Paint Hazards in the Target Housing Being Leased**

32. Complainant incorporates by reference Paragraphs 1 through 31.

33. Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall include within the contract or as an attachment a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

34. Respondent did not provide the Lessee Family a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the Property in or attached to the contract to lease the Property, nor did Respondent indicate that no such records existed.

35. Respondent's failure to include in an attachment to the contract to lease the Property to the Lessee Family a list of any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing or indicate that no such records exist constitutes a violation of 40 C.F.R. § 745.113(b)(3) and Section 409 of TSCA.

**VI. PROPOSED CIVIL PENALTY**

36. Based on the violations described in this Complaint, EPA seeks to assess a total civil penalty of \$50,474 against Respondent. The proposed civil penalty has been determined in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, the provisions of 40 C.F.R. §

745.118(f), as well as the Civil Penalties Inflation Adjustment Act of 2015, 81 Fed. Reg. 41465



(June 27, 2016), and its implementing regulations at 40 C.F.R. Part 19. See also 84 Fed. Reg. 2056 (February 6, 2019), and 84 Fed. Reg. 5955 (February 25, 2019).

37. In determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that Complainant consider the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, the effect of the proposed penalty on their ability to continue in business, any history of prior such violations, its degree of culpability, and such other matters as justice may require.

To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (the "ERP"), a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. See Attachment 1 to this Complaint for an explanation of the rationale for the proposed penalty.

38. Count I: Failure to Provide the EPA-approved Pamphlet

For one (1) violation of 40 C.F.R. § 745.107(a)(1), EPA proposes a penalty of \$17,834.

39. Count II: Failure to Include the Lead Warning Statement

For one (1) violation of 40 C.F.R. § 745.113(b)(1), EPA proposes a penalty of \$16,320.

40. Count III: Failure to Provide Statement and Disclosure

For one (1) violation of 40 C.F.R. § 745.113(b)(2), EPA proposes a penalty of \$12,240.

41. Count IV: Failure to Provide Lessees Any Records or Reports

For one (1) violation of 40 C.F.R. § 745.113(b)(3), EPA proposes a penalty of \$4,080.

**QUICK RESOLUTION**

42. Under Section 22.18(a) of EPA's Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying in full the penalty proposed in this Complaint. Payment of the penalty may be made by a bank, cashier's or certified check, payable to "The Treasurer, United States of America." The check should also note the docket number of this Complaint (TSCA-01-2019-0050) and should be forwarded to:

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

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: 04-6  
Boston, Massachusetts 02109-3912

and

Tim Conway  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square, Suite 100  
Mail Code: 04-2  
Boston, Massachusetts 02109-3912

If payment is made within thirty (30) days of receipt of the Complaint, Respondent need not file an Answer. If Respondent agrees to pay the penalty but needs additional time, Respondent may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt

of the Complaint. In that event, Respondent need not file an Answer, as described in the following section of this Complaint, and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default. See 40 C.F.R. § 22.18(a).

43. Any settlement in this matter shall be made final by the issuance of a written Consent Agreement and Final Order approved by the Regional Judicial Officer, EPA Region 1.

#### **VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

44. As provided by Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with Part 22, a copy of which is enclosed with this Complaint. **To avoid being found in default, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint.** The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. If Respondent has no knowledge of a particular fact and so states, the allegation is considered denied. Failure to deny an allegation constitutes an admission. Respondent's Answer must also state all facts and circumstances, if any, which constitute grounds for a defense and, if desired, must specifically request an administrative hearing. If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing. The Answer must be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100 (Mail Code 04-6)  
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer and all other documents which Respondent files in this action to Tim Conway, the attorney assigned to represent EPA in this matter, at the address listed above.

45. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

#### **VIII. INFORMAL SETTLEMENT CONFERENCE**

46. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent is encouraged to contact Tim Conway, Senior Enforcement Counsel, at (617) 918-1705, to discuss the legal matters relating to this Complaint or to arrange an informal settlement conference.

**Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted to avoid default.**

Mr. Conway, at the above address and telephone number, has been designated to represent Complainant, and is authorized to receive service of process in this action.

Date

9/27/19

Karen McGuire *for*

Director, Enforcement and Compliance Assurance Division  
U.S. EPA, Region 1

In the Matter of Howard Gross, Respondent

Docket No. TSCA-01-2019-0050

**CERTIFICATE OF SERVICE**

I hereby certify that, on the date(s) referenced below, the foregoing Complaint was delivered in the manner stated to the following addressee(s):

Original and One Copy by Hand Delivery To:

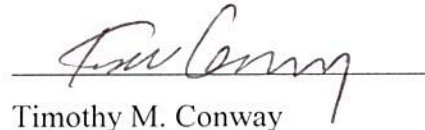
Wanda Santiago  
Regional Hearing Clerk  
US EPA Region 1  
5 Post Office Square,  
Suite 100 (Mail Code 04-6)  
Boston, MA 02109-3912

Copy by Mail to Respondent:

Howard Gross  
406 Central Avenue, Suite 9  
Dover, New Hampshire 03820

Signed:

9/30/19



Timothy M. Conway  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
5 Post Office Square, Suite 100 (04-3)  
Boston, MA 02109-3912  
Phone: 617-919-1705  
Fax: 617-918-0705