



U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 1 - NEW ENGLAND

5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

RECEIVED

MAY 31 2011

EPA ORC WS
Office of Regional Hearing Clerk

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ
direct: (617) 918-1867

BY HAND

May 31, 2011

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 - New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Re: *In the Matter of Atlas Property Management, Inc. et al.*, Docket No. TSCA-01-2011-0026;
Amended Complaint and Notice of Opportunity for Administrative Hearing

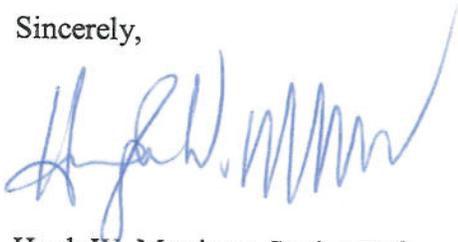
Dear Ms. Santiago:

Please find enclosed for filing in the above-entitled case the original and one copy of an Amended Complaint and Notice of Opportunity for Administrative Hearing ("Amended Complaint") as well as a Certificate of Service documenting that a copy of the Amended Complaint was mailed to representatives of those Respondents named in the Amended Complaint —Atlas Property Management, Inc., 224-224A Washington Street Nominee Realty Trust (Ilya M. Shnayder, Trustee), and Archgate Townhouses, LLC— and representatives of those former Respondents that were named in the initial Complaint previously filed by EPA but are removed in the Amended Complaint. The latter, including 224-224A Washington Street, Inc., Adar Investments, LLC, and Ilya M. Shnayder, Individually, appear to have been named in error in the original Complaint.

Please note that this Amended Complaint is being filed pursuant to 40 C.F.R. § 22.14(c) which allows Complainant to file an amended complaint once, as of right, before an answer is filed. The same section of the Consolidated Rules also allows Respondents an additional 20 days to file an answer in response to the Amended Complaint.

Thank you for your assistance in this matter.

Sincerely,



Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: Carl Lindley, Jr., Esquire [counsel for Atlas Property Management, Inc., 224-224A
Washington Street Nominee Realty Trust (Ilya M. Shnayder, Trustee), 224-224A
Washington Street, Inc., and Ilya M. Shnayder, individually]

Yevgeniy D. Rozenberg, Resident Agent, Archgate Townhouses, LLC

Greg Virgilio, Resident Agent, Adar Investments, LLC

Molly Magoon, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

MAY 31 2011

EPA ORC WS
Office of Regional Hearing Clerk

IN THE MATTER OF:)
)
ATLAS PROPERTY MANAGEMENT, INC.)
220 Linden Street)
Holyoke, Massachusetts 01040)
)
224-224A WASHINGTON STREET NOMINEE)
REALTY TRUST)
ILYA M. SHNAYDER, TRUSTEE)
P.O. Box 808)
Westwood, Massachusetts 02090)
)
ARCHGATE TOWNHOUSES, LLC)
35 Parsons Drive)
Swampscott, Massachusetts 01907)
)
Respondents.)
)
Proceeding under Section 16(a) of the Toxic)
Substances Control Act, 42 U.S.C. § 2615(a).)
_____)

AMENDED COMPLAINT
AND
NOTICE OF
OPPORTUNITY FOR
ADMINISTRATIVE
HEARING

Docket No.
TSCA-01-2011-0026

I. STATEMENT OF AUTHORITY

1. This Amended Complaint and Notice of Opportunity for Administrative Hearing ("Amended Complaint") is issued pursuant to 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. The Complainant is the Legal Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1.

II. NATURE OF THE ACTION

2. The Respondents in this action, Atlas Property Management, Inc. ("Atlas") and

224-224A Washington Street Nominee Realty Trust and Ilya M. Shnyder, Trustee (the "Trust"), and Archgate Townhouses, LLC ("Archgate") (collectively, the Trust and Archgate are referred to as the "Property Owners"), are hereby notified of the Enforcement Manager's determination that they have violated TSCA Section 409, 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 federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, set forth in 40 C.F.R. Part 745, Subpart F (the "Disclosure Rule"). Complainant seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409 are subject to the assessment by Complainant of civil and/or criminal penalties. In support of its Amended Complaint, Complainant alleges the following:

III. STATUTORY AND REGULATORY BACKGROUND

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, and that the ingestion of lead from deteriorated or abraded lead-based paint 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 lead-based paint hazards is taken into account in the rental of homes and apartments.

4. In 1996, the United States Environmental Protection Agency ("EPA") promulgated regulations to implement the Act. These regulations (the Disclosure Rule) are set

forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act is termed “target housing.” “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled, or any 0-bedroom dwelling.

6. The Disclosure Rule requires sellers and lessors of target housing, among other things and before a purchaser or lessee is obligated under a contract to purchase or lease target housing, to:

- a) provide to purchasers and lessees a lead hazard information pamphlet;
- b) disclose the presence of any known lead-based paint and/or lead-based paint hazards, and provide available records of the same;
- c) ensure that the contract to lease or sell includes a Lead Warning Statement; and,
- d) ensure that the contract to lease or sell includes a statement by the lessor or seller disclosing the presence of known lead-based paint or lead-based paint hazards, or indicating no knowledge thereof.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with the requirements of the Disclosure Rule is a violation of TSCA Section 409.

8. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of TSCA Section 409 shall be liable to the United States for a civil penalty.

9. 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 occurring after July 28, 1997, shall be no more than \$11,000.

IV. GENERAL ALLEGATIONS

10. Respondent Atlas is a corporation organized under the laws of Massachusetts with a principal place of business located at 220 Linden Street in Holyoke, Massachusetts. Atlas is, or was during time periods relevant to the violations alleged herein, a property management company with management responsibilities at each of the rental properties referenced in this Amended Complaint.

11. Respondent Trust is a real estate trust with Ilya M. Shnyder as Trustee and a mailing address of P.O. Box 808 in Westwood, Massachusetts. The Trustee is an individual with a residential address of 220A Linden Street in Holyoke, Massachusetts. The Trust is, or was during time periods relevant to the violations alleged herein, the owner of one or more of the rental properties where at least some of the violations alleged in this Amended Complaint occurred.

12. Respondent Archgate is a limited liability corporation organized under the laws of Massachusetts with a principal place of business located at 35 Parsons Drive in Swampscott, Massachusetts. Archgate is, or was during time periods relevant to the violations alleged herein, the owner of one or more of the rental properties where at least some of the violations alleged in this Amended Complaint occurred.

13. At the time of the violations alleged in this Amended Complaint, Atlas and/or the

Property Owners offered for lease the apartments in the properties described in Paragraph 14, below. Accordingly, each of the Respondents is, or was during time periods relevant to the violations alleged herein, a “lessor” as defined in 40 C.F.R. § 745.103.

14. At all times periods relevant to the violations alleged in this Amended Complaint, Atlas and the Property Owners offered for lease numerous apartments within their respective properties located at the following addresses:

	Property Name/Location	No. Units (approx.)	Year Constructed	Property Owner
1.	93 Jackson Street Holyoke, MA	17	cir. 1910	The Trust
2.	799 High Street Holyoke, MA	17	cir. 1900	The Trust
3.	388 Appleton Street Holyoke, MA	24	cir. 1900	The Trust
4.	2 Harrison Avenue Holyoke, MA	6	cir. 1928	The Trust
5.	149 Sargeant Street Holyoke, MA	16	cir. 1927	The Trust
6.	865 Hampden Street Holyoke, MA	13	cir. 1925	The Trust
7.	92 Jackson Street Holyoke, MA	14	cir. 1890	The Trust
8.	182 Pearl Street Holyoke, MA	13	cir. 1925	The Trust
9.	758 Westfield Street West Springfield, MA	4	cir. 1964	Archgate Townhouses, LLC
10.	659 High Street Holyoke, MA	8	cir. 1920	The Trust

15. Each of the apartment units associated with the properties referred to in Paragraph 14 is or was, at the time of the violations alleged in this Amended Complaint, “target housing,” as defined in 40 C.F.R. § 745.103. None of the apartments satisfies the requirements for an

exemption to the provisions of the Act or the Disclosure Rule.

16. On September 26, 2007, authorized representatives of EPA conducted an on-site inspection (the "Inspection") at Atlas offices located at 663 High Street in Holyoke, Massachusetts. During or as a result of the Inspection, EPA inspectors reviewed and obtained copies of documents, including leases, relating to compliance with the Disclosure Rule.

17. On August 5, 2009, EPA issued a Notice of Noncompliance ("NON") and information request letter to Atlas. The NON notified Atlas of violations of the Disclosure Rule identified by EPA inspectors during, or as a result of, the Inspection and requested additional information necessary to assess Atlas's compliance with the Disclosure Rule at subject properties managed by Atlas. The NON informed Atlas that its response to the information request was due within 30 days of the date Atlas received the NON.

18. On or about January 5, 2010, Atlas submitted information and records to EPA in response to the NON and information request letter.

V. VIOLATIONS

19. EPA has identified the following violations of the Act and the Disclosure Rule based on documents and other information obtained from Atlas during, or as a result of, EPA's September 2007 Inspection and in response to the August 2009 NON and information request letter:

FIRST COUNT

Failure to Provide Lead Hazard Information Pamphlet

20. Paragraphs 1 through 19, above, are incorporated by reference as if fully set forth

herein.

21. Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor is required to provide a lessee, before the lessee is obligated under any contract to lease target housing, 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 in particular states by EPA (such as the publication entitled *Massachusetts Tenant Lead Law Notification*).

22. Respondents Atlas and the Trust failed to provide the following tenants with an EPA-approved lead hazard information pamphlet before the tenants entered into a contract to lease the specific apartments indicated below:

- a) Tenant who became obligated to rent 799 High St., Unit 4, Holyoke, MA, on or about June 27, 2007;
- b) Tenant who became obligated to rent 388 Appleton St., Unit 18, Holyoke, MA, on or about February 5, 2007;
- c) Tenant who became obligated to rent 93 Jackson St., Unit 2L, Holyoke, MA, on or about June 27, 2007;
- d) Tenant who became obligated to rent 2 Harrison Ave., Unit 1R, Holyoke, MA, on or about September 10, 2007;
- e) Tenant who became obligated to rent 149 Sargeant St., Unit 2L, Holyoke, MA, on or about August 3, 2007;
- f) Tenant who became obligated to rent 865 Hampden St., Unit 1R, Holyoke, MA, on or about May 14, 2007;
- g) Tenant who became obligated to rent 92 Jackson St., Unit 1L, Holyoke, MA, on or about June 15, 2007;
- h) Tenant who became obligated to rent 182 Pearl St., Unit 2R, Holyoke, MA, on or about July 5, 2007; and,
- i) Tenant who became obligated to rent 659 High St., Unit 2L, Holyoke, MA, on or about February 27, 2007.

23. Respondents Atlas and Archgate failed to provide the following tenant with an EPA-approved lead hazard information pamphlet before the tenant entered into a contract to

lease the specific apartment indicated below:

- a) Tenant who became obligated to rent 758 Westfield St., Unit 1, West Springfield, MA, on or about October 1, 2009.

24. Respondents Atlas' and the Trust's failure to provide lessees of target housing with an EPA-approved lead hazard information pamphlet prior to the lessees becoming obligated under a contract to lease target housing on at least nine (9) occasions constitutes at least nine (9) separate violations of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409, 15 U.S.C. § 2689.

25. Respondents Atlas' and Archgate's failure to provide a lessee of target housing with an EPA-approved lead hazard information pamphlet prior to the lessee becoming obligated under a contract to lease target housing on at least one (1) occasion constitutes at least one (1) violation of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409.

26. Each of the above-listed instances of violation alleged in the First Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and each is a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA, 15 U.S.C. § 2615.

SECOND COUNT

Failure to Disclose Known Lead-Based Paint/Hazards and Provide Records

27. Paragraphs 1 through 26, above, are incorporated by reference as if fully set forth herein.

28. Pursuant to 40 C.F.R. § 745.107(a)(4), a lessor is required to provide to the lessee 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 before the lessee becomes obligated under the lease contract. This requirement includes records or reports regarding common areas. The term "available records" includes records in the lessor's possession or records that are reasonably obtainable by the lessor at the time of the disclosure.

29. Respondents Atlas and the Trust failed to provide the following tenants with records or reports pertaining to lead-based paint or lead-based paint hazards before the tenants entered into a contract to lease the specific apartments listed below:

- a) Tenant who became obligated to rent 93 Jackson St., Unit 3R, Holyoke, MA, on or about November 30, 2009;
- b) Tenant who became obligated to rent 799 High St., Unit 4, Holyoke, MA, on or about June 27, 2007;
- c) Tenant who became obligated to rent 388 Appleton St., Unit 18, Holyoke, MA, on or about February 5, 2007;
- d) Tenant who became obligated to rent 93 Jackson St., Unit 2L, Holyoke, MA, on or about June 27, 2007;
- e) Tenant who became obligated to rent 2 Harrison Ave., Unit 1R, Holyoke, MA, on or about September 10, 2007;
- f) Tenant who became obligated to rent 92 Jackson St., Unit 1L, Holyoke, MA, on or about June 15, 2007; and,
- g) Tenant who became obligated to rent 659 High St., Unit 2L, Holyoke, MA, on or about February 27, 2007.

30. At the time Respondents Atlas and the Trust leased the apartments listed in the preceding paragraph, those Respondents possessed or could have reasonably obtained the following records or reports pertaining to lead-based paint and/or lead-based paint hazards in such properties:

- a) 93 Jackson St., Unit 3R (Holyoke, MA) – *Letter of Lead Abatement Compliance*, issued by Emerald Lead Testing Co., Springfield, MA, referencing inspection on April 15, 1994;

- b) 799 High St., Unit 4 (Holyoke, MA) – *Letter of Lead Abatement Compliance*, referencing inspection on June 17, 1994; *Letter of Full Deleading Compliance*, issued by Emerald Lead Testing Co., dated February 26, 1997;
- c) 388 Appleton St., Unit 18 (Holyoke, MA) – *Letter of Full Initial Lead Inspection Compliance*, issued by Emerald Lead Testing Co., dated April 28, 2000; *Letters of Full Deleading Compliance*, four (4) letters, each dated May 4, 2001, referencing inspections on the same date; *Letters of Initial Lead Inspection Compliance*, seven (7) letters, referencing inspections on July 16, 1998, July 30, 1998, July 31, 1998, August 5, 1998, or August 6, 1998;
- d) 93 Jackson St., Unit 2L (Holyoke, MA) – *Letter of Full Deleading Compliance*, issued by Emerald Lead Testing Co., dated December 2, 1998; *Inspection and Deleading History* (for reoccupancy inspection on December 2, 1998);
- e) 2 Harrison Ave., Unit 1R (Holyoke, MA) – *Record of Inspection/Determination*, referencing November 6, 2006 inspection by John Wierciszewski (Lic. #2331);
- f) 92 Jackson St., Unit 1L (Holyoke, MA) – *Letter of Lead Paint (Re)Occupancy Reinspection Certification*, dated April 8, 2007; *Inspection and Deleading History* (for initial inspection on August 28, 2006); *Lead Dust Wipe and Analysis Report*, date reported April 6, 2007; *Letter of Full Deleading Compliance*, dated May 24, 2007; and,
- g) 659 High St., Unit 2L (Holyoke, MA) – *Letter of Full Deleading Compliance*, issued by Emerald Lead Testing Co., dated October 17, 1997; *Inspection and Abatement History*, referencing reoccupancy inspection of October 17, 1997.

31. Respondents Atlas and Archgate failed to provide the following tenant with records or reports pertaining to lead-based paint or lead-based paint hazards before the tenant entered into a contract to lease the specific apartment indicated below:

- a) Tenant who became obligated to rent 758 Westfield St., Unit 1, West Springfield, MA, on or about October 1, 2009.

32. At the time Respondents Atlas and Archgate leased the apartment listed in the preceding paragraph, those Respondents possessed or could have reasonably obtained the following records or reports pertaining to lead-based paint and/or lead-based paint hazards in such property:

- a) 758 Westfield St., Unit 1 (West Springfield, MA) – *Certificate of Maintained Compliance*, referencing February 26, 2005 inspection by Edward O'Brien (Lic. #3712); *Post-Compliance Assessment Determination (PCAD)*, referencing February 26, 2005 inspection.

33. Respondents Atlas' and the Trust's failure to provide records or reports pertaining to lead-based paint or lead-based paint hazards prior to lessees becoming obligated under a contract to lease target housing on at least seven (7) occasions constitutes at least seven (7) separate violations of 40 C.F.R. § 745.107(a)(4) and TSCA Section 409, 15 U.S.C. § 2689.

34. Respondents Atlas' and Archgate's failure to provide records or reports pertaining to lead-based paint or lead-based paint hazards prior to a lessee becoming obligated under a contract to lease target housing on at least one (1) occasion constitutes at least one (1) violation of 40 C.F.R. § 745.107(a)(4) and TSCA Section 409.

35. Each of the above-listed instances of violation alleged in the Second Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and each is a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA.

THIRD COUNT
Failure to Include Lead Warning Statement

36. Paragraphs 1 through 35, above, are incorporated by reference as if fully set forth herein.

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

38. Respondents Atlas and Archgate failed to include a Lead Warning Statement in, or attached to, a lease contract before the following lessees became obligated under that contract with those Respondents to lease target housing:

- a) Tenant who became obligated to rent 758 Westfield St., Unit 1, West Springfield, MA, on or about October 1, 2009.

39. Respondents Atlas' and Archgate's failure to include, before a lessee becomes obligated under a lease contract, a Lead Warning Statement in, or attached to, the same contract to lease target housing to a lessee on at least one (1) occasion constitutes at least one (1) violation of 40 C.F.R. § 745.113(b)(1), and TSCA Section 409, 15 U.S.C. § 2689.

40. The above-listed violation alleged in the Third Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA.

FOURTH COUNT
Failure to Include Disclosure Statement Regarding Lead-Based Paint/Hazards

41. Paragraphs 1 through 40, above, are incorporated by reference as if fully set forth herein.

42. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include, as an attachment to or within the lease contract, 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 a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

43. Respondents Atlas and the Trust failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or a statement indicating no knowledge of the same in, or attached to, their contracts with each of the following lessees:

- a) Tenant who became obligated to rent 93 Jackson St., Unit 3R, Holyoke, MA, on or about November 30, 2009;
- b) Tenant who became obligated to rent 799 High St., Unit 4, Holyoke, MA, on or about June 27, 2007;
- c) Tenant who became obligated to rent 388 Appleton St., Unit 18, Holyoke, MA, on or about February 5, 2007;
- d) Tenant who became obligated to rent 93 Jackson St., Unit 2L, Holyoke, MA, on or about June 27, 2007;
- e) Tenant who became obligated to rent 2 Harrison Ave., Unit 1R, Holyoke, MA, on or about September 10, 2007;
- f) Tenant who became obligated to rent 92 Jackson St., Unit 1L, Holyoke, MA, on or about June 15, 2007; and,
- g) Tenant who became obligated to rent 659 High St., Unit 2L, Holyoke, MA, on or about February 27, 2007.

44. Respondents Atlas and Archgate failed to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or a statement indicating no knowledge of the same in, or attached to, their contract with the following lessee:

- a) Tenant who became obligated to rent 758 Westfield St., Unit 1, West Springfield, MA, on or about October 1, 2009.

45. Respondents Atlas' and the Trust's failure to include a statement 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 in, or attached to, seven (7) lease contracts constitutes seven (7) separate violations of 40 C.F.R. § 745.113(b)(2), and TSCA Section 409, 15 U.S.C. § 2689.

46. Respondents Atlas' and Archgate's failure to include a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or a statement indicating no knowledge of the same in, or attached to, one (1) lease contract constitutes one (1) violation of 40 C.F.R. § 745.113(b)(2), and TSCA Section 409.

47. Each of the above-listed instances of violation alleged in the Fourth Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e) and each is a violation for which penalties may be assessed pursuant to the Section 1018(b)(5) of the Act and Section 16 of TSCA.

VI. PROPOSED PENALTY

48. Section 1018(b)(5) of the Act, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation under Section 16 of TSCA shall be no more than \$11,000 for violations that occurred after January 30, 1997 through January 12, 2009 and up to \$16,000 per violation for violations that occurred after January 12, 2009. *See also* 40 C.F.R. Part 19.

49. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. 15 U.S.C. § 2615. To assess a

penalty for the violations alleged herein, Complainant will take 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* ("Penalty Policy"). The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases.

50. By this Amended Complaint, Complainant seeks to assess civil penalties of up to \$11,000 per violation for violations that occurred after January 30, 1997 through January 12, 2009, and up to \$16,000 per violation for violations that occurred after January 12, 2009, against Respondents, as applicable, for the following violations:

- a) FIRST COUNT: Ten (10) separate violations of 40 C.F.R. § 745.107(a)(1) for failure to provide an EPA-approved lead hazard information pamphlet – A lessor's failure to provide an EPA-approved lead hazard information pamphlet has a high probability of impairing a lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information when leasing target housing. The pamphlet describes the hazards associated with lead-based paint and provides information about how lessees can protect themselves against potential lead exposure. The pamphlet also explains that lead exposure is especially harmful to young children and pregnant women.
- b) SECOND COUNT: Eight (8) separate violations of 40 C.F.R. § 745.107(a)(4) for failure to provide lessees with records and reports pertaining to lead-based paint and/or lead-based paint hazards and provide lessees with records and reports pertaining to the same – A lessor's failure to provide records or reports to a lessee pertaining to lead-based paint and/or lead-based paint hazards is a serious violation of the Disclosure Rule regulations. The failure to provide records or reports pertaining to lead-based paint and/or lead-based paint hazards has a high probability of impairing the lessee's ability to properly assess and weigh the health risks associated with target housing and greatly increases the likelihood of exposure to lead-based paint hazards. A lessor's failure to provide such records or reports also undermines the intent of Disclosure Rule, which is to disclose to potential lessees

any and all information regarding lead-based paint and/or lead-based paint hazards that may be present in the target housing the lessees are considering renting.

- c) THIRD COUNT: One (1) violation of 40 C.F.R. § 745.113(b)(1) for failure to provide a Lead Warning Statement – A lessor’s failure to include a Lead Warning Statement in the language of a lease contract, or as an attachment thereto, has a high probability of impairing a lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. The Lead Warning Statement explains that lead exposure is especially harmful to young children and pregnant women.
- d) FOURTH COUNT: Eight (8) separate violations of 40 C.F.R. § 745.113(b)(2) for failure to provide a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards – A lessor’s failure to include a statement disclosing knowledge of lead-based paint and/or lead-based paint hazards has a medium probability of impairing a lessee’s ability to properly assess the risks associated with leasing target housing. The intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in housing and violations of this provision deprive lessees of their ability to make decisions based upon risk. Without such a statement, a lessee may unwittingly lease a unit that is known to contain lead-based paint.

51. The numbers of violations alleged in this Amended Complaint for each respective

Respondent are as follows:

<u>Respondents</u>	<u>Number of Violations by Respondent(s)</u>
Atlas Property Management, Inc. and the Trust, Ilya M. Shnayder, Trustee	23
Atlas Property Management, Inc. and Archgate Townhouses, LLC	4

52. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the violations alleged herein and explaining how the proposed penalty was calculated,

In re: Atlas Property Management, Inc. et al.
Amended Complaint and Notice of Opportunity for Hearing
EPA Docket No. TSCA-01-2011-0026

as required by the Consolidated Rules of Practice. Complainant will calculate a proposed penalty based, in part, on its current knowledge of the Respondents' financial condition. The proposed penalty may be adjusted if Respondents establish *bona fide* issues of ability to pay or other defenses relevant to the appropriate amount of the penalty. Respondents shall pay the civil penalty with a cashier's or certified check, payable to the Treasurer, United States of America. Respondents should note on the check the docket number of this Amended Complaint (EPA Docket No. TSCA-01-2011-0026). The check shall be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (Mail Code OES 04-3)
Boston, MA 02109-3912

53. Neither the assessment nor payment of an administrative penalty shall affect

Respondents' continuing obligation to comply with all applicable requirements of federal law.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

54. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, Respondents have a right to request a hearing on any material fact alleged in this Amended Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated into a written Answer. Respondents must file the original and one copy of the written Answer to an Amended Complaint filed pursuant to 40 C.F.R. § 22.14(c) within twenty (20) days of receipt of the Amended Complaint.** Respondents shall send the Answer to the Regional Hearing Clerk at the following address:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109-3912

Respondents shall serve copies of the Answer and any other documents submitted in this proceeding to EPA attorney Hugh W. Martinez, at the following address:

Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (Mail Code OES 04-3)
Boston, MA 02109-3912

In their Answer, Respondents may contest any material fact contained in the Amended

Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Amended Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of any defense; (2) the facts Respondents dispute; (3) the basis for opposing any proposed relief; and, (4) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondents to admit, deny, or explain any material fact contained in the Amended Complaint constitutes an admission of that allegation. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

VIII. DEFAULT ORDER

55. If Respondents fail to file a timely Answer to the Amended Complaint, Respondents may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Amended Complaint and a waiver of Respondents' right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

IX. SETTLEMENT CONFERENCE

56. Whether or not a hearing is requested upon filing an Answer, Respondents may confer informally with the EPA concerning the alleged violations. Such conference provides Respondents with an opportunity to provide whatever additional information may be relevant to

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

57. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondents should contact Complainant's counsel, Hugh W. Martinez, at the address cited above, or by calling him at (617) 918-1867. Mr. Martinez has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.



Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

5/26/11
Date

In re: Atlas Property Management, Inc. et al.
Amended Complaint and Notice of Opportunity for Hearing
EPA Docket No. TSCA-01-2011-0026

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Complaint and cover letter to the Regional Hearing Clerk have been provided to the following persons on the date and in the manner noted below:

Original and one copy,
hand-delivered:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109-3912

One copy to each Respondent named in the Amended Complaint,
by First Class Mail, Return
Receipt Requested:

Carl Lindley, Jr., Esquire
Law Office Carl Lindley
220 Linden Street
Holyoke, MA 01040
*(Attorney for Respondents, Atlas Property
Management, Inc. and 224-224A Washington Street
Nominee Realty Trust, Ilya M. Shnayder, Trustee)*

and

Yevgeniy D. Rozenberg, Resident Agent
Archgate Townhouses, LLC
35 Parsons Drive
Swampscott, MA 01907

One copy to each previously named Respondent, now omitted in the Amended Complaint,
by First Class Mail, Return
Receipt Requested:

Carl Lindley, Jr., Esquire
Law Office Carl Lindley
220 Linden Street
Holyoke, MA 01040
*(Attorney for previously named Respondents, Ilya
M. Shnayder, Individually, and 224-224A
Washington Street, Inc.)*

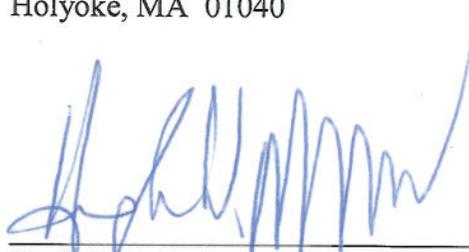
and

In re: Atlas Property Management, Inc. et al.
Amended Complaint and Notice of Opportunity for Hearing
EPA Docket No. TSCA-01-2011-0026

CERTIFICATE OF SERVICE (cont.)
page 2

Adar Investments, LLC
Greg Virgilio, Resident Agent
% Virgilio Property Management, Inc.
731 High Street
Holyoke, MA 01040

Date: 5-31-11



Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912
Phone (dir.): 617-918-1867
Fax: 617-918-0867
E-mail: martinez.hugh@epa.gov