



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 07 2011

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 1082

Mr. Samuel Ascencio
Mrs. Glenda Ascencio
64848 McIntosh Lane
Goshen, Indiana 46526

Re: In the Matter of Samuel and Glenda Ascencio, Docket No: **TSCA-05-2011-0017**

Dear Mr. and Mrs. Ascencio:

I have enclosed a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Samuel and Glenda Ascencio 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 Tamara Carnovsky, Associate Regional Counsel at (312) 886-2250.

Sincerely,

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

Margaret M. Guerriero
Director

Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2011-0017
)	
Samuel and Glenda Ascencio)	Proceeding to Assess a Civil Penalty
Goshen, Indiana)	Under Section 16(a) of the Toxic
)	Substances Control Act, 15 U.S.C. § 2615(a)
)	
Respondents)	
_____)	

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Complaint

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. Respondents are Samuel and Glenda Ascencio, individuals doing business in the State of Indiana.

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.* (the Act), 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 of the Act, 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. 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 were required to have complied 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. 40 C.F.R. § 745.100.

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 as set out in 40 C.F.R. § 745.113(b)(1); a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing with any additional supporting information available, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards; a list of any records or reports available to the lessor that have been provided to the lessee regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records are available; a statement by the lessee affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements to the best of their knowledge.

12. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing or refusing 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 March 15, 2004 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. Complainant incorporates paragraphs 1 through 13 of this Complaint as if set forth in this paragraph.

15. Between at least September 28, 2006 through November 8, 2008, Respondents owned residential apartment buildings at 110 South 7th Street, Goshen, Indiana; 513-515 South Main Street, Goshen, Indiana; and 508 West Washington Street, Elkhart, Indiana (collectively, Respondents' Properties).

16. Respondents' Properties were constructed prior to 1978.

17. Respondents' Properties and each single-family dwelling unit within Respondents' Properties are "target housing" as defined in 40 C.F.R. § 745.103.

18. On January 28, 2009, representatives of EPA conducted an inspection at Respondents' business office to monitor compliance with Section 1018 and its implementing regulations at 40 C.F.R. Part 745, Subpart F.

19. On the following dates, Respondents entered into the following five written lease agreements (contracts) with individuals for the lease of Respondents' single family dwelling or single family-dwelling units:

Address	Date of Lease
513-515 South Main Street, Goshen, Indiana	September 28, 2006
515 South Main Street, Goshen, Indiana	March 1, 2007
508 West Washington Avenue, Elkhart, Indiana	August 23, 2008
110 South 7 th Street, Apartment B, Goshen, Indiana	November 8, 2008

20. Each of the four contracts referenced in paragraph 19, above, covered a term of occupancy greater than 100 days.

21. Between September 29, 2006 and November 8, 2008, Respondents offered for lease single-family dwellings or single-family dwelling units in Respondents' Properties, and individuals entered into contracts on the dates listed in paragraph 19, above, to lease those

single-family dwellings or single-family dwelling units.

22. Respondents are “lessors,” as defined by 40 C.F.R. § 745.103.

23. Each individual who signed a lease to pay rent in exchange for occupancy of a unit referenced in paragraph 19, above, became a “lessee,” as defined in 40 C.F.R. § 745.103.

24. On May 18, 2010, EPA advised Respondents by letter that EPA was planning to file a civil administrative complaint against Respondents for specific alleged violations of Section 1018, and that the complaint would seek a civil penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint. EPA asked Respondents to submit specific financial documents if Respondents believed there were financial factors which bore on Respondents’ ability to pay a civil penalty.

25. On May 21, 2010, Respondents received the pre-filing notice letter referred to in paragraph 24, above. Respondent Samuel Ascencio informed Complainant that he could not pay the proposed penalty during a June 7, 2010 telephone conversation.

26. On June 7 and June 27, 2010, EPA sent a letter to Respondents requesting them to submit the financial documents specified in Complainant’s May 18, 2010 letter if Respondents believed that there were financial factors which bore on Respondents’ ability to pay a civil penalty.

27. In an August 30, 2010 letter, Respondents asserted an ability to pay the proposed penalty for the violations alleged in EPA’s pre-filing notice letter. Respondents failed to include with their response, however, all the requested financial documents. On January 12, 2011, EPA again sent a letter to Respondents requesting that they submit all of the requested financial documents. To date, EPA has not received all of the requested financial documents.

28. Based on the financial documents submitted by Respondents and Complainant’s

evaluation of publically available information, EPA has determined that Respondents have an ability to pay a proposed penalty of \$12, 920.

Counts 1 through 4

29. Complainant incorporates paragraphs 1 through 28 of this Complaint as if set forth in this paragraph.

30. **Count 1:** Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated September 28, 2006, for 513-515 South Main Street, Goshen, Indiana, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1).

31. **Count 2:** Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated March 1, 2007, for 515 South Main Street, Goshen, Indiana, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1).

32. **Count 3:** Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated August 23, 2008, for 508 West Washington Avenue, Elkhart, Indiana, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1).

33. **Count 4:** Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated November 8, 2008, for 110 South 7th Street, Apartment B, Goshen, Indiana, a Lead Warning Statement as set out in 40 C.F.R. § 745.113(b)(1).

34. Respondents' failure to include, either within each contract or as an attachment, a Lead Warning Statement for each leasing transaction referred to in paragraphs 30 through 33, above, constitutes four violations of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C.

§ 4852d(b)(5).

Counts 5 through 8

35. Complainant incorporates paragraphs 1 through 28 of this Complaint as if set forth in this paragraph.

36. **Count 5**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated September 28, 2006, for 513-515 South Main Street, Goshen, Indiana, a statement by the lessor 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.

37. **Count 6**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated March 1, 2007, for 515 South Main Street, Goshen, Indiana, a statement by the lessor 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.

38. **Count 7**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated August 23, 2008, for 508 West Washington Avenue, Elkhart, Indiana, a statement by the lessor 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.

39. **Count 8**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated November 8, 2008, for 110 South 7th Street, Apartment B, Goshen, Indiana, a statement by the lessor 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.

40. Respondents' failure to include, either within each contract or as an attachment, a statement by the lessor 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 36 through 39, above, constitutes four violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 9 through 12

41. Complainant incorporates paragraphs 1 through 28 of this Complaint as if set forth in this paragraph.

42. **Count 9**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated September 28, 2006, for 513-515 South Main Street, Goshen, Indiana, 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 had been provided to the lessee or a statement that no such records were available.

43. **Count 10**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated March 1, 2007, for 515 South Main Street, Goshen, Indiana, 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 had been provided to the lessee or a statement that no such records were available.

44. **Count 11**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated August 23, 2008, for 508 West Washington Avenue, Elkhart, Indiana, 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 had been

provided to the lessee or a statement that no such records were available.

45. **Count 12**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated November 8, 2008, for 110 South 7th Street, Apartment B, Goshen, Indiana, 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 had been provided to the lessee or a statement that no such records were available.

46. Respondents' 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 had been provided to the lessee, or a statement that no such records were available, for each leasing transaction referred to in paragraphs 42 through 45, above, constitutes four violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 13 through 16

47. Complainant incorporates paragraphs 1 through 28 of this Complaint as if set forth in this paragraph.

48. **Count 13**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated September 28, 2006, for 513-515 South Main Street, Goshen, Indiana, a statement by the lessee affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

49. **Count 14**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated March 1, 2007, for 515 South Main Street, Goshen, Indiana, a statement by the lessee affirming receipt of the information required

by 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

50. **Count 15**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated August 23, 2008, for 508 West Washington Avenue, Elkhart, Indiana, a statement by the lessee affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

51. **Count 16**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated November 8, 2008, for 110 South 7th Street, Apartment B, Goshen, Indiana, a statement by the lessee affirming receipt of the information required by 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

52. Respondents' failure to include, either within each contract or as an attachment, a statement by the lessee affirming receipt of the information required by 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 48 through 51, above, constitutes four violations of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 17 through 20

53. Complainant incorporates paragraphs 1 through 28 of this Complaint as if set forth in this paragraph.

54. **Count 17**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated September 28, 2006, for 513-515 South Main Street, Goshen, Indiana, the signatures of the lessor and the lessee certifying to the

accuracy of their statements and the dates of such signatures.

55. **Count 18**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated March 1, 2007, for 515 South Main Street, Goshen, Indiana, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

56. **Count 19**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated August 23, 2008, for 508 West Washington Avenue, Elkhart, Indiana, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

57. **Count 20**: Respondents failed to include, either within the contract or as an attachment to the contract to lease target housing dated November 8, 2008, for 110 South 7th Street, Apartment B, Goshen, Indiana, the signatures of the lessor and the lessee certifying to the accuracy of their statements and the dates of such signatures.

58. Respondents' 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 54 through 57 above, constitutes four 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

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

Count 1

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1)	\$1,550
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Count 2

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1) \$1,550

Count 3

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1) \$1,550

Count 4

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(1) \$1,550

Count 5

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2) \$770

Count 6

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2) \$770

Count 7

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2) \$770

Count 8

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(2) \$770

Count 9

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3) \$260

Count 10

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3) \$260

Count 11

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3) \$260

Count 12

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(3) \$260

Count 13

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4) \$520

Count 14

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4) \$520

Count 15

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4) \$520

Count 16

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(4) \$520

Count 17

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6) \$130

Count 18

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6) \$130

Count 19

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6) \$130

Count 20

42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.113(b)(6) \$130

Total Proposed Civil Penalty \$12,920

60. 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.

61. 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 a 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.

62. As stated in paragraph 24, above, EPA advised Respondents by letter that EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 of the Act and that Section 1018 authorizes the assessment of a civil administrative penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint, and to submit specific financial documents if Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty.

63. EPA requested Respondents to submit all the requested financial information on four occasions so that EPA could factually consider the claimed inability to pay a penalty. Respondents failed to provide all the requested information. Based on the financial documents submitted by Respondents and Complainant's evaluation of publically available information, EPA has determined that Respondents have an ability to pay a proposed penalty of \$12, 920.

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

Respondents must file with the Regional Hearing Clerk the original and one copy of each document Respondents intend 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

Respondents 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 Tamara Carnovsky to receive any Answer and subsequent legal documents that Respondents serve in this proceeding. You may telephone Ms. Carnovsky at (312) 886-2250. Her address is:

Tamara Carnovsky (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

Respondents 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

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

Pamela Grace (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 Respondents contest any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contend that they are entitled to judgment as a matter of law, Respondents may request a hearing before an Administrative Law Judge. To request a hearing, Respondents 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, Respondents must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondents' written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint or must state clearly that Respondents have no

knowledge of a particular factual allegation. Where Respondents state that they have no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondents' Answer must also state:

- a. The circumstances or arguments which Respondents allege constitute grounds of defense;
- b. The facts that Respondents dispute;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondents request a hearing.

If Respondents do 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 Respondents constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondents 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 Respondents request a hearing, Respondents 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, Respondents may contact Tamara Carnovsky at the address provided above.

Respondents' request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondents 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


Respondents' payment of the civil penalty will not satisfy Respondents' 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 Respondents 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.

9/7/11

Date



Margaret M. Guerriero
Director
Land and Chemicals Division

TSCA-05-2011-0017

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SEP - 8 2011
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

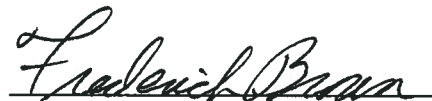
CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Complaint of the civil administrative action involving Mr. Samuel Ascencio and Mrs Glenda Ascenkcio, was filed on September 8, 2011, 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 0005 8933 1082, along with a copy each of the to:

Mr. Samuel Ascencio
Mrs. Glenda Ascencio
64848 McIntosh Lane
Goshen, Indiana 46526

and forwarded intra-Agency copies to:

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


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

Docket No. TSCA-05-2011-0017

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