

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

FEDEX
DIRECT SIGNATURE CONFIRMATION REQUESTED

Mountainside Realty, a General Partnership
Kevin Weinhoffer, General Partner
Marshall R. Corbin, General Partner
1506 Pine Crest Drive
South Williamsport, PA 17702

26 JUN 2008

Re: Toxic Substances Control Act
Administrative Complaint,
and Notice of Opportunity for Hearing
In the Matter of Mountainside Realty et al.
Docket No. TSCA-03-2008-0333

Dear Messrs. Corbin and Weinhoffer:

Enclosed please find an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") concerning alleged violations of Section 409 of Toxic Substances Control Act, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the "Disclosure Rule"), in relation to nine (9) written lease agreements associated with different target housing units.

The Complaint should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations.

Unless you elect to follow the "Quick Resolution" procedures described in the Quick Resolution section (p. 19) of the Complaint, you must file an Answer to this Complaint within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint by specific Answer within thirty (30) days of your receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalty proposed in the Complaint without further proceedings.

In your Answer, you may choose to request a hearing to contest any matter set forth in the Complaint. Whether or not a hearing is requested, you may request an informal settlement

conference to discuss resolution of this case in your Answer or you may contact the attorney assigned to this case.

EPA has determined that your company may be considered a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA). Please see the "Information Sheet for Small Business Resources" enclosed with this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

Should you have any questions or if you would like to request a settlement conference, please call Louis F. Ramalho, Senior Assistant Regional Counsel at (215) 814-2681.

Sincerely,



Abraham Ferdas
Division Director
Waste and Chemicals Management Division

Enclosures

cc: Demian Ellis (3WC33)

J. Michael Wiley, Esq.
Raup & Wiley
829 West Fourth Street
Williamsport, PA 17701

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Marshall R. Corbin, General Partner
Mountainside Realty
116 Corbin Rosa Drive
South Williamsport, PA 17702

26 JUN 2008

Re: Toxic Substances Control Act
Administrative Complaint,
and Notice of Opportunity for Hearing
In the Matter of Mountainside Realty et al.
Docket No. TSCA-03-2008-0333

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Williamsport, PA 17701

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of: :
 :
Mountainside Realty, :
a Pennsylvania general partnership :
 :
Kevin Weinhoffer and :
Marshall R. Corhin, general partners :
 :
 Respondents, :
 :
2713 Grand Street :
South Williamsport, Pennsylvania :
375 Main Street, Apt. #2 :
South Williamsport, Pennsylvania :
438 Market Street, 1st Floor :
South Williamsport, Pennsylvania :
110 Valley Street :
Duboistown, Pennsylvania :
2669 Riverside Drive :
South Williamsport, Pennsylvania :
212 West Southern Avenue :
South Williamsport, Pennsylvania :
507 ½ West Southern Avenue :
South Williamsport, Pennsylvania :
505 West Southern Avenue :
South Williamsport, Pennsylvania :
815 West Southern Avenue :
South Williamsport, Pennsylvania :
 :
 Target Housing. :
 :
_____ :

Docket No. TSCA-03-2008-0333

RECEIVED
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REGION III

**ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY
FOR A HEARING ISSUED PURSUANT TO SECTION 16(a) OF THE TOXIC
SUBSTANCES CONTROL ACT ("TSCA"), 15 U.S.C. § 2615(a)**

This Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 16(a) of the Toxic Substances Control

Act (“TSCA”), 15 U.S.C. § 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators and this authority has been further delegated in U.S. EPA Region III to, *inter alia*, the Director of the Waste and Chemicals Management Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A.

The Respondents in this action are Mountainside Realty, a Pennsylvania general partnership, and its general partners, Kevin Weinoffer and Marshall R. Corbin. By issuing this Complaint, Complainant alleges violations by the Respondents of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the “Disclosure Rule”), in relation to nine (9) written lease agreements associated with nine (9) different target housing units, described more fully in Paragraph 17 of this Complaint.

Failure to comply with Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.

In support of the Complaint, Complainant alleges the following:

I. JURISDICTION

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689; Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d; 40 C.F.R. Part 745, Subpart F; and 40 C.F.R. §§ 22.1(a)(5) and 22.4.

II. DEFINITIONS AND REGULATORY REQUIREMENTS

2. Pursuant to 40 C.F.R. § 745.103, the term “agent” means, with certain exceptions, any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.
3. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm^2] or 0.5 percent by weight.
4. Pursuant to 40 C.F.R. § 745.103, the term “lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.
5. Pursuant to 40 C.F.R. § 745.107(a)(1), the term “lead hazard information pamphlet” includes the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA

#747-K-94-001) or an equivalent pamphlet approved for use in a state by EPA.

6. Pursuant to 40 C.F.R. § 745.103, the term “Lessee” means 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.
7. Pursuant to 40 C.F.R. § 745.103, the term “Lessor” means 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.
8. Pursuant to Section 1004(23) of the RLBPHRA, 42 U.S.C. § 4851b(23), Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means: (1) A single-family dwelling, including attached structures such as porches and stoops; or (2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.
9. Pursuant to Section 1004(24) of the RLBPHRA, 42 U.S.C. § 4851b(24), and Section 401(15) of TSCA, 15 U.S.C. § 2681(15), the term “residential real property” means real property on which there is situated one (1) or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one (1) or more persons.

10. Pursuant to Section 1004(27) of the RLBPHRA, 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means 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.
11. 40 C.F.R. § 745.113(b)(1) provides that each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement with the following language: “Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”
12. 40 C.F.R. § 745.113(b)(2) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the 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 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 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.

13. 40 C.F.R. § 745.113(b)(3) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.
14. 40 C.F.R. § 745.113(b)(4) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. Mountainside Realty is a Pennsylvania general partnership consisting of the following general partners: Kevin Weinhoffer and Marshall R. Corbin.
16. At all times relevant to the violations in this Complaint, Mountainside Realty and its general partners, Kevin Weinhoffer and Marshall R. Corbin, (collectively, “Respondents”), were “owners” and “lessors”, as those terms are defined in 40 C.F.R. § 745.103, of various real properties and the buildings thereon, as identified with particularity in Paragraph 17, below.
17. The nine (9) properties referred to in paragraph 16, above, are: 2713 Grand Street, South Williamsport, Pennsylvania; 375 Main Street, Apt. #2, South Williamsport, Pennsylvania; 438 Market Street, 1st Floor, South Williamsport, Pennsylvania; 110

Valley Street, Duboistown, Pennsylvania; 2669 Riverside Drive, South Williamsport, Pennsylvania; 212 West Southern Avenue, South Williamsport, Pennsylvania; 507 ½ West Southern Avenue, South Williamsport, Pennsylvania; 505 West Southern Avenue, South Williamsport, Pennsylvania, and 815 West Southern Avenue, South Williamsport, Pennsylvania (hereinafter collectively referred to as the “9 Target Housing Properties”).

18. At all times relevant to the violations alleged herein, each of the 9 Target Housing Properties consisted of real property on which there was situated one building used as the home or residence for one or more persons.
19. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the 9 Target Housing Properties was housing constructed prior to 1978.
20. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the 9 Target Housing Properties consisted of housing that was not housing for the elderly or persons with disabilities and was not a 0-bedroom dwelling as provided in 40 C.F.R. § 745.103.
21. At all times relevant to the violations alleged herein, each building situated on the real property located at each of the 9 Target Housing Properties contained a “residential dwelling” and was “target housing” within the meaning of Section 1004(23) and (27) of the RLBPHRA, 42 U.S.C. § 4851b(23) and (27), Section 401(14) and (17) of TSCA, 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103.

A. 2713 Grand Street (Lease Transaction #1)

22. On September 20, 2005, Respondents purchased the real estate located at 2713 Grand Street, South Williamsport, Pennsylvania and Respondents assumed a written contract dated July 26, 2005 (hereinafter referred to as “Lease Transaction #1”) with a “lessee”, as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease a residential unit for a term of one year commencing on August 1, 2005 and terminating on July 31, 2006.
23. On August 1, 2006, Respondents renewed the July 26, 2005 written contract with a “lessee”, as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease a residential unit at 2713 Grand Street, South Williamsport, Pennsylvania for a term of one year commencing on August 1, 2006 and terminating on July 31, 2007.
24. Lease Transaction #1 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
25. Lease Transaction #1 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

B. 375 Main Street, Apt. #2 (Lease Transaction #2)

26. Respondents entered into a written contract, dated October 1, 2004 (hereinafter referred to as “Lease Transaction #2”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 375 Main Street, Apt. #2, South Williamsport, Pennsylvania for a term of one year commencing on October 1, 2004 and

terminating on September 30, 2005.

27. Lease Transaction #2 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
28. Lease Transaction #2 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

C. 438 Market Street, 1st Floor (Lease Transaction #3)

29. Respondents entered into a written contract, dated April 1, 2004 (hereinafter referred to as “Lease Transaction #3”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 438 Market Street, 1st Floor, South Williamsport, Pennsylvania for a term of slightly over one year commencing on April 1, 2004 and terminating on April 1, 2005.
30. Lease Transaction #3 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
31. Lease Transaction #3 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

D. 110 Valley Street (Lease Transaction #4)

32. Respondents entered into a written contract, dated April 1, 2004 (hereinafter referred to as “Lease Transaction #4”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 110 Valley Street, Duboistown, Pennsylvania for a month-to-month term commencing on April 1, 2004.
33. Lease Transaction #4 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
34. Lease Transaction #4 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

E. 2669 Riverside Drive (Lease Transaction #5)

35. Respondents entered into a written contract, dated September 1, 2004 (hereinafter referred to as “Lease Transaction #5”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 2669 Riverside Drive, South Williamsport, Pennsylvania for a term of one year commencing on September 1, 2004 and terminating on August 31, 2005.
36. Lease Transaction #5 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
37. Lease Transaction #5 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107

and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

F. 212 West Southern Avenue (Lease Transaction #6)

38. Respondents entered into a written contract, dated October 15, 2004 (hereinafter referred to as “Lease Transaction #6”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 212 West Southern Avenue, South Williamsport, Pennsylvania for a term of slightly over one year commencing on October 15, 2004 and terminating on October 15, 2005.
39. Lease Transaction #6 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
40. Lease Transaction #6 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

G. 507 ½ West Southern Avenue (Lease Transaction #7)

41. Respondents entered into a written contract, dated May 1, 2005 (hereinafter referred to as “Lease Transaction #7”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 507^{1/2} West Southern Avenue, South Williamsport, Pennsylvania for a term of one year commencing on May 1, 2005 and terminating on April 30, 2006.

42. Lease Transaction #7 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
43. Lease Transaction #7 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

H. 505 West Southern Avenue (Lease Transaction #8)

44. Respondents entered into a written contract, dated July 25, 2005 (hereinafter referred to as “Lease Transaction #8”) with a “Lessee,” as that term is defined at 40 C.F.R. § 745.103, to rent and/or lease the target housing located at 505 West Southern Avenue, South Williamsport, Pennsylvania for a term of slightly over one year commencing on July 25, 2005 and terminating on July 25, 2006.
45. Lease Transaction #8 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
46. Lease Transaction #8 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

I. 815 West Southern Avenue (Lease Transaction #9)

47. Respondents entered into a written contract, dated November 2, 2004 (hereinafter referred to as “Lease Transaction #9”) with a “Lessee,” as that term is defined at 40

C.F.R. § 745.103, to rent and/or lease the target housing located at 815 West Southern Avenue, South Williamsport, Pennsylvania for a term of slightly over one year commencing on November 2, 2004 and terminating on November 2, 2005.

48. Lease Transaction #9 was not a “[s]hort-term lease[] of 100 days or less, where no lease renewal or extension can occur,” as provided at 40 C.F.R. § 745.101(c).
49. Lease Transaction #9 was not a “[r]enewal[] of [an] existing lease . . . in which the lessor has previously disclosed all information required under [40 C.F.R.] § 745.107 and where no new information described in [40 C.F.R.] § 745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. § 745.101(d).

IV. VIOLATIONS

Counts 1 - 9

(Violations of 40 C.F.R. §§ 745.113(b)(1) Regarding Lease Transactions #1 Through #9)

- 50 The allegations contained in Paragraphs 1 through 49, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
51. Respondents failed to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, each of their respective lease transactions, as identified in the Paragraphs 22 through 49, above.
52. Pursuant to 40 C.F.R. § 745.118(e), Respondents’ failure to include a “Lead Warning Statement,” containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1), either as an attachment to, or within, each of Lease Transactions #1 -

#9, constitutes 9 separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 10 - 18
(Violations of 40 C.F.R. §§ 745.113(b)(2)
Regarding Lease Transactions #1 - #9)

53. The allegations contained in Paragraphs 1 through 52, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
54. Respondents failed 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 a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, each of Lease Transactions #1 - #9, as required by 40 C.F.R. § 745.113(b)(2).
55. Pursuant to 40 C.F.R. § 745.118(e), Respondents' 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 a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, either as an attachment to, or within, each of Lease Transactions #1 - #9, constitutes 9 separate violations of Section 1018(b)(5) of RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

Counts 19 - 27
(Violations of 40 C.F.R. §§ 745.113(b)(4)
Regarding Lease Transactions #1 Through #9

56. The allegations contained in Paragraphs 1 through 55, above, of this Complaint are incorporated by reference herein as though fully set forth at length.

57. Respondents failed to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, each of Lease Transactions #1 - #9, as required by 40 C.F.R. § 745.113(b)(4).
58. Pursuant to 40 C.F.R. §745.118(e), Respondents' failure to include a statement by the lessee affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. § 2686, either as an attachment to, or within, each of Lease Transactions #1 - #9, constitutes 9 separate violations of Section 1018(b)(5) of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

IV. CIVIL PENALTY

Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, in the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This amount has been adjusted to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, which increases the civil penalties which can be assessed by EPA under TSCA for violations occurring on or after July 28, 1997 by 10%. This Rule also provides for a 17.23% penalty increase for all violations occurring after March 15, 2004, but the maximum penalties cannot exceed \$11,000 per violation at this time.

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, 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 matters as justice may require (“statutory factors”). In developing a proposed penalty, Complainant takes into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and EPA’s *Section 1018 Disclosure Rule Final Enforcement Response Policy (“Final ERP”)*, dated December 2007, a copy of which is enclosed with this Complaint. The *Final ERP* provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

The penalty proposed herein does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes the assessment of a civil penalty of **\$45,940.00** for the violations alleged in this Complaint. Pursuant to 40 C.F.R. § 22.14(a)(4)(i), an explanation of the number and severity of violations is as follows:

1. Explanation of Circumstance Level and Extent of Violation

A. Circumstance Levels:

- a) 40 C.F.R. § 745.113(b)(1) violations: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.113(b)(1) are deemed to represent a “high” level of impairment to a lessee’s ability to assess the information required to be disclosed and have been characterized as Circumstance Level 2 violations in the ERP. As a result, each of the violations alleged in Counts 1 - 9 of this Complaint may be characterized as Circumstance Level 2 violations for purposes of calculating an appropriate penalty.

- b) 40 C.F.R. § 745.113(b)(2) violations: Violations of the disclosure requirements set at 40 C.F.R. § 745.113(b)(2) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 3 violations in the ERP. As a result, each of the violations alleged in Counts 10 – 18 of this Complaint may be characterized as Circumstance Level 3 violations for purposes of calculating an appropriate penalty.
- c) 40 C.F.R. § 745.113(b)(4) violations: Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(4) are deemed to represent a “medium” level of impairment to a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. As a result, each of the violations alleged in Counts 19 - 27 of this Complaint may be characterized as Circumstance Level 4 violations for purposes of calculating an appropriate penalty.

B. Extent Levels:

Failure to provide lead-based paint disclosures and/or certifications to lessees where no children or pregnant women live in the target housing is considered a “Minor Extent” violation under the ERP. However, failure to provide lead-based paint disclosures and/or certifications to lessees where children or pregnant women live in the target housing is considered a “Major Extent” violation under the ERP. Respondents failed to provide disclosures and/or certifications with respect to eight

(8) different lease agreements (Lease Transactions #1 through #5, and #7 through # 9) to lessees in which EPA has not determined whether children or pregnant women were present. Accordingly, the Disclosure Rule violations associated with each of these eight (8) lease transactions are all “Minor Extent” violations. However, Respondents failed to provide disclosures and/or obtain affirmations with respect to Lease Transaction #6 for target housing at which children under the age of six were present during the term of the lease. Accordingly, the Disclosure Rule violations associated with Lease Transaction #6 are all “Major Extent.”

2. Summary of Penalty Calculation

<u>Counts</u>	<u>Violations</u>	<u>Circumstance/Extent</u>	<u>Penalty</u>
1 – 5	113(b)(1)	Level 2, Minor Extent	\$1,550 per count x 5 counts = \$ 7,750
6	113(b)(1)	Level 2, Major Extent	\$ 10,320
7 - 9	113(b)(1)	Level 2, Minor Extent	<u>\$1,550 per count x 3 counts = \$ 4,650</u>
			Total: \$22,720

<u>Counts</u>	<u>Violations</u>	<u>Circumstance/Extent</u>	<u>Penalty</u>
10-14	113(b)(2)	Level 3, Minor Extent	\$ 770.00 per count x 5 counts = \$ 3,850
15	113(b)(2)	Level 2, Major Extent	\$ 7,740
16-18	113(b)(2)	Level 3, Minor Extent	<u>\$ 770.00 per count x 3 counts = \$ 2,310</u>
			Total: \$13,900

<u>Counts</u>	<u>Violations</u>	<u>Circumstance/Extent</u>	<u>Penalty</u>
19-23	113(b)(4)	Level 4, Minor Extent	\$ 520.00 per count x 5 counts = \$ 2,600
24	113(b)(4)	Level 4, Major Extent	\$ 5,160
25- 27	113(b)(4)	Level 4, Minor Extent	<u>\$ 520.00 per count x 3 counts = \$ 1,560</u>
			Total: \$ 9,320

Total Proposed Penalty for Counts 1 – 27: \$45,940.00

EPA proposes that such penalty be assessed against the Respondents jointly and

severally. EPA will consider, among other factors, each Respondent's ability to pay the proposed civil penalty assessed in this Complaint. With respect to Respondents' ability to pay the proposed penalty, it is each Respondent's responsibility to provide to Complainant financial information to support and establish a claim by any Respondent of an inability to pay the proposed penalty. To the extent that facts or circumstances, including, but not limited to, additional information concerning a Respondent's ability to pay the proposed penalty that were unknown to Complainant at the time of the issuance of the Complaint become known to Complainant after issuance of the Complaint, such facts and circumstances may be considered as a basis for adjusting the civil penalty proposed in this Complaint.

QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a), Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondents pay the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondents wish to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondents may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondents agree to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Louis F. Ramalho

(3RC30), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondents shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondents to default pursuant to 40 C.F.R. § 22.17. Payment of the full penalty in accordance with this paragraph shall be made: In U.S. currency drawn on a U.S. bank by certified or cashier's check, or by EFT (electronic wire transfer) or ACH (Automated Clearinghouse) transfer, payable to the "**United States Treasury**", and mailed or transmitted to the applicable address shown below:

By Regular US Postal Service Mail:

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

By Private Commercial Overnight Delivery:

U.S. EPA, Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Payment of the penalty as proposed in this Complaint may also be made by electronic transfer to:

Wire Transfers

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33

33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
“D 68010727 Environmental Protection Agency”)

Automated Clearing House (ACH) Transfers

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074

To ensure proper crediting of the payment, it must reference the paying Respondent’s name and address and the EPA Docket Number (TSCA-03-2008-0333) of this Complaint. A notice of payment, including a copy of the check or receipt (for EFT or ACH), shall be sent simultaneously to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and to Louis F. Ramalho, Sr. Assistant Regional Counsel (3RC30), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Upon receipt of payment in full in accordance with Section 22.18(a)(3) of the Consolidated Rules of Practice, the Regional Administrator, or his designee, shall issue a Final Order to Respondents. Payment shall constitute a waiver of Respondents’ right to contest the allegations in the Complaint and to appeal the Final Order.

NOTICE AND OPPORTUNITY TO REQUEST A HEARING

Each Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, a Respondent must file a written Answer to the Complaint, within thirty (30)

days of receipt of this Complaint, with:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where a Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted.

If a Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against such Respondent in this Complaint and a waiver of that Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by a Respondent will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

A copy of each Respondent's Answer and all other documents that a Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Louis F. Ramalho, Senior Assistant Regional Counsel, at:

Office of Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA and the RLBPHRA. Whether or not a hearing is requested, any Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve each Respondent of its/his responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of each settling Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

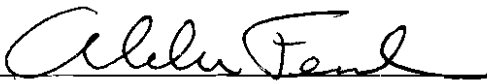
If any Respondent wishes to arrange a settlement conference, such Respondent or such Respondent's legal counsel should contact Mr. Ramalho at (215) 814-2681 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve each Respondent of its/his responsibility to file an Answer within thirty (30) days following such Respondent's receipt of this Complaint.

SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to

represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Waste and Chemicals Management Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

6/25/08
Date


Abraham Ferdas, Director
Waste and Chemicals Management Division

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint, Docket No. TSCA-03-2008-0333, and associated enclosures, has been filed with the EPA Region III Regional Hearing Clerk, and that copies of the same were sent via Federal Express Overnight Delivery to the following persons at the following addresses:


Kevin Weinhoffer, individually
1506 Pine Crest Drive
South Williamsport, PA 17702

Marshall R. Corbin, individually
1506 Pine Crest Drive
South Williamsport, PA 17702

Mountainside Realty
1506 Pine Crest Drive
South Williamsport, PA 17702

J. Michael Wiley, Esquire
Raup & Wiley
The Henry C. Parsons House
829 West Fourth Street
Williamsport, PA 17701
Counsel for Respondents

6/26/08
Date



Louis F. Ramalho (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2681

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U.S. EPA