

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

)
) **DOCKET NO. TSCA-05-2009-0004**
)

Kathryn Y. Lewis-Campbell
Springfield, Ohio

U.S. EPA ID #: OHD 106 483 522

Respondent

RECEIVED
JUN 16 2009

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

**PRE-HEARING EXCHANGE OF THE ADMINISTRATOR'S
DELEGATED COMPLAINANT**

The Administrator's Delegated Complainant (Complainant), by undersigned Counsel, hereby submits this Pre-Hearing Exchange in conformance with the Pre-Hearing Order of the Presiding Officer, entered April 17, 2009.

(1) LIST OF WITNESSES AND LIST OF EXHIBITS

Complainant intends to call the following witnesses at hearing:

Donald Freeman, Jr. --

He will testify that, on September 7, 2006, he entered into a "Real Estate Purchase Agreement" with Respondent, Kathryn Lewis-Campbell, and that Attachment A is a true and correct copy of that agreement, which both parties signed. He will testify that the property he purchased by this agreement included a residential house. The street address of the property is 137 E. Southern, Springfield, Ohio 45505. He will testify that Respondent did not provide him with a copy of any lead hazard information pamphlet; any Lead Warning Statement; any statement as to her knowledge, or lack of knowledge, of the presence of lead-based paint and/or lead-based paint hazards in the residential house she sold him; and any records or reports pertaining to lead-based paint hazards in the house. He will further testify that he gave no statement acknowledging his receipt of any of this information, or acknowledging that he was given an opportunity to conduct a risk assessment or inspection regarding the presence of any lead-based paint hazards. He will also testify that there were children residing with him in the residential house from the time he purchased it, two of which were twin girls, 4 years old.

Roger Frank --

He will testify that he is employed by the Clark Count Combine Health District. He will testify that on June 6 and July 5 2007, he conducted an assessment of the lead risks in the residential house located at 137 E. Southern in Springfield, Ohio. His findings from that assessment are included in Attachments B and C.

Complainant intends to introduce at any hearing that may be held in this matter the following documents, attached:

- (A) Real Estate Purchase Agreement for 137 E. Southern (September 7, 2006).
 - (B) Lead Risk Assessment Report for 137 E. Southern (July 31, 07).
 - (C) Lead Paint Inspection Report for 137 E. Southern (July 1, 2007).
 - (D) Penalty Rationale.
 - (E) TSCA Subpoena issued to Kathryn Y. Lewis-Campbell, April 4, 2008.
 - (F) Response of Kathryn Y. Lewis-Campbell to TSCA Subpoena, received June 2, 2008.
 - (G) Response of Donald Freeman, Jr., to U.S. EPA Questionnaire, dated October 31, 2007, with attachments.
 - (H) Order to Control Lead Hazards, dated August 3, 2007.
 - (I) Letter of Richard R. Wagner ot Cassandra Collier-Williams, date April 28, 2009, with attachment.
- (2) See Attachment D, "Penalty Rationale."
- (3) On April 22, 2009, Respondent filed a Motion for Leave to File Amended Answer, Instanter, and an Amended Answer, adding a claim that she is unable to pay the penalty amount proposed. On April 27, Complainant filed a response stating that she had no objection to Respondent's Answer being amended. On April 28, 2009, Complainant requested by letter that Respondent provide Complainant her income tax returns and schedules, as well as complete and return a "Statement of Financial Affairs-Individual" which Complainant provided with the letter. Attachment I. Respondent has provided her income tax returns but has not returned the completed statement.

- (4) In Paragraph 4 of the Prehearing Order, the Presiding Officer directed Complainant to provide its position regarding the applicability of the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 et seq., to this proceeding, including whether

there is a current Office of Management and Budget (OMB) control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.

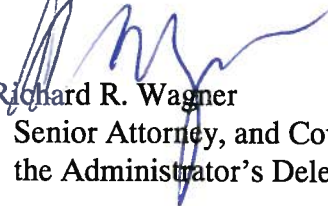
The PRA does apply to the information collection requirements of the lead-paint disclosure rule at 40 C.F.R. Part 745, Subpart F. U.S. EPA obtained OMB approval of the information collection requirements and the OMB control number assigned to the information collection requirements in the rule is 2070-0151. According to the preamble to the final rule, the rule contains the following information collection requirements: (1) disclosure of known lead-based paint and/or lead-based paint hazards; (2) provision of any available records and reports pertaining to lead-based paint in the housing; (3) provision of a federally-approved lead hazard information pamphlet; (4) completion and subsequent retention of disclosure and acknowledgment for 3 years; and (5) provision of a 10-day evaluation opportunity to purchasers before obligation under purchase contracts. See 61 Fed. Reg. 9081, March 6, 1996.

On May 31, 1996, U.S. EPA issued a notice in the Federal Register (61 Fed. Reg. 27348) to announce that on April 22, 1996, OMB had approved the information collection requirements contained in 40 C.F.R. §§ 745.107, 745.110, 745.113, and 745.115. This notice stated that OMB control number 2070-0151 had been assigned to these collection activities, and was valid through April 30, 1999. On July 1, 1996 (61 Fed. Reg. 33851), U.S. EPA amended the table in 40 C.F.R. Part 9 to add this OMB control number to the listing of OMB control numbers for U.S. EPA's regulations that appear in Section 9.1. See 64 Fed. Reg. 39418 (July 22, 1999). The control number was renewed on September 28, 2001 (66 Fed. Reg. 49664), November 30, 2004 (69 Fed. Reg. 69598-69599) and most recently on April 4, 2008 (73 Fed. Reg. 20037). The OMB Control Number will not expire until March 31, 2011.

The transactions alleged in the Complaint occurred during 2003 and 2004. Complainant states that there were no lapses in this OMB control number during the period of noncompliance cited in the Complaint. Thus, Complainant has fully complied with the PRA with respect to the counts at issue in this proceeding.

- (5) Complainant would recommend that any hearing to be conducted be held in Springfield, Ohio.

Respectfully submitted,



Richard R. Wagner
Senior Attorney, and Counsel for
the Administrator's Delegated Complainant

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CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of the **Pre-Hearing Exchange of the Administrator's Delegated Complainant**, in the office of the Regional Hearing Clerk (R-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604, with this Certificate of Service.

I further certify that I then caused true and correct copies of the filed documents to be mailed to the following:

Honorable William B. Moran
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

I further certify that I then caused true and correct copies of the filed document to be sent to the following, by mail:

Cassandra Collier-Williams, Esq.
P.O. Box 94062
Cleveland, Ohio 44101

June 16, 2009



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