

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Audrey Zucker 5/24/19  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number TSCA-01-2018-0017

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Investment Properties, L.L.C.  
474 Fort Hill Road  
Gorham, ME 04038

Total Dollar Amount of Receivable \$ 82,896 Due Date: 6/23/19

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

_____ )	
<b>IN THE MATTER OF:</b> )	
)	
Investment Properties, L.L.C. )	
474 Fort Hill Road )	EPA Docket No.
Gorham, ME 04038 )	TSCA-01-2018-0017
)	
Respondent. )	
)	
Proceeding under Section 16(a) )	
of the Toxic Substances Control )	
Act, 15 U.S.C. § 2615(a) )	
_____ )	

**INITIAL DECISION AND DEFAULT ORDER**

This civil administrative proceeding was commenced under the authority of Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

This proceeding was initiated by an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) filed by the Complainant, United States Environmental Protection Agency, Region 1 (“EPA”) against the Respondent, Investment Properties, L.L.C. (“Investment Properties”) on or about February 6, 2018. The Complaint alleged that Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the requirements contained in 40 C.F.R. §§ 745.100-745.119, promulgated under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act (Disclosure Rule), 42 U.S.C. § 4851, *et seq.*

In the currently pending Motion for Default Order (“Motion for Default”), Complainant alleges that Respondent is in default for failure to file an Answer to the Complaint and requests that a penalty of

EIGHTY-TWO THOUSAND EIGHT HUNDRED AND NINETY SIX DOLLARS (\$82,896.00) be assessed.

Based upon the record in this matter and the following TSCA Findings of Fact and Conclusions of Law, Complainant's Motion for Default is hereby GRANTED. Respondent is hereby found in default and held liable for the TSCA violations alleged by the Complainant.

### **BACKGROUND**

This civil administrative proceeding, instituted under the authority of Section 16(a) of the TSCA, 15 U.S.C. § 2615(a), was initiated by EPA through the issuance of a Complaint on or about February 6, 2018 against Investment Properties. The Complaint charges Respondent with twenty violations of Section 409 of TSCA for failing to comply with the Disclosure Rule requirements in 40 C.F.R. §§ 745.100-745.119. The Disclosure Rule is promulgated under section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4851, *et seq.*

In relevant part, the Complaint explicitly states on page 13, section VIII, *Notice of Opportunity to Request a Hearing*, that:

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

Under 40 C.F.R § 22.15(a) of the Consolidated Rules, an Answer to the Complaint must be filed with the Regional Hearing Clerk within thirty days after service of the Complaint. Under 40 C.F.R. §

22.17(a), a party may default by failing to file a timely Answer to a Complaint. This default “constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations.” 40 C.F.R. § 22.17(a). Therefore, if a Respondent was properly served, the facts alleged by the Complainant are admitted against the defaulting Respondent.

### **TSCA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a), and based upon the entire Record, I make the following findings and conclusions of law:

1. Complainant is the United States Environmental Protection Agency, Region 1.
2. Respondent is Investment Properties, L.L.C.

#### **Service of the Complaint**

3. The Complaint was sent by certified mail, return receipt requested, to Respondent on or about February 7, 2018.
4. On or about March 12, 2018, the Complaint was returned by the U.S. Post Office to EPA, stamped “Return to Sender Unclaimed/Unable to Forward/Return to Sender.”
5. On March 12, 2018, a copy of the Complaint was sent to Respondent by the United Parcel Service (“UPS”) to Frederick Lockwood, Member, Investment Properties, L.L.C., 474 Fort Hill Road, Gorham, ME 04038. On the UPS online tracking site, the letter was recorded as “delivered” at 9:45 AM on March 13, 2018.
6. Service was complete as to Respondent as of March 13, 2018.
7. Respondent did not settle the matter, file a written Answer, or request a hearing or extension of time to file an Answer, within the thirty-day period specified under 40 C.F.R § 22.15(a).
8. On December 19, 2018, Complainant filed a Motion for Default Order.

9. To date, Respondent has not filed an Answer to the Complaint.
10. In accordance with 40 C.F.R. 22.17(a), the Respondent is in DEFAULT and all of the facts alleged by the Complainant shall be deemed admitted against Respondent.

### **Violations of the Toxic Substances Control Act Regulations**

11. Section 409 of TSCA, 15 U.S.C. § 2689, makes it “unlawful for any person to fail or refuse to comply with a provision of this subchapter or with any rule or order issued under this subchapter” of TSCA.
12. Respondent is an “owner” and “lessor” of “target housing,” as defined in 40 C.F.R. § 745.103, in that Respondent is an entity with legal title of nine residential buildings in Lewiston, Maine constructed prior to 1978. Respondent’s target housing at issue in the Complaint are: 73 Bartlett Street #1, 141 Bartlett Street #1, 141 Bartlett Street #2, 166 Bartlett Street #1, 166 Bartlett Street #2, 166 Bartlett Street #3, 184 Bartlett Street #2, 184 Bartlett Street 3rd floor front, and 182 Blake Street #3.
13. Section 745.107(a)(1) of the Disclosure Rule, 40 C.F.R. § 745.107(a)(1), requires a lessor to provide a lessee with an EPA-approved lead hazard information pamphlet entitled *Protect your Family from Lead in the Home*, or an equivalent pamphlet approved by EPA for use in the state, before a lessee is obligated under a contract to lease target housing.
14. Section 745.113(b)(2) of the Disclosure Rule, 40 C.F.R. § 745.113(b)(2), requires a lessor to include within, or as an attachment to, the contract to lease target housing 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 thereof.
15. Section 745.113(b)(3) of the Disclosure Rule, 40 C.F.R. § 745.113(b)(3), requires a lessor to include within, or as an attachment to, the contract to lease target housing a list of any records or reports

available to the lessor that pertain to lead-based paint hazards in the housing, or an indication that no such records exist.

16. On June 30, 2016, EPA performed an inspection of Respondent's properties in Lewiston, Maine. During a meeting on June 30, 2016, Respondent provided EPA inspectors with copies of the Respondent's leases in Lewiston, Maine, and EPA provided Respondent with a "Notice of Potential Violations of the Disclosure Rule."

17. On or about August 6, 2015, Respondent entered into a lease contract with a family with no dependents, to lease 73 Bartlett Street #1.

18. On or about August 13, 2015, Respondent entered into a lease contract with a family with one dependent, age eight, to lease 141 Bartlett Street #1.

19. On or about December 15, 2014, Respondent entered into a lease contract with a family with no dependents, to lease 141 Bartlett Street #2.

20. On or about October 6, 2015, Respondent entered into a lease contract with a family with three dependents, ages seven, nine, and fourteen, to lease 166 Bartlett Street #1.

21. On or about March 16, 2015, Respondent entered into a lease contract with a family with no dependents, to lease 166 Bartlett Street #2.

22. On or about February 2, 2015, Respondent entered into a lease contract with a family with one dependent, age six, to lease 166 Bartlett Street #3.

23. On or about August 31, 2015, Respondent entered into a lease contract with a family with no dependents, to lease 184 Bartlett Street #2.

24. On or about March 24, 2016, Respondent entered into a lease contract with a family with two dependents, ages four and ten, to lease 184 Bartlett Street 3rd floor front.

25. On or about August 19, 2015, Respondent entered into a lease contract with a family with one dependent, age seventeen, to lease 182 Blake Street #3.
26. Respondent failed to provide an EPA-approved lead hazard information pamphlet to the lessees of 184 Bartlett Street #1 and 184 Bartlett Street 3rd floor front.
27. Respondent failed to include an attachment or statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the lease contracts for the following units: 73 Bartlett Street #1; 141 Bartlett Street #1; 141 Bartlett Street #2; 166 Bartlett Street #1; 166 Bartlett Street #2; 166 Bartlett Street #3; 184 Bartlett Street #2; 184 Bartlett Street, 3rd floor front; and 182 Blake Street #3.
28. Respondent failed to include an attachment or statement listing any records or reports available to the lessor that pertain to lead-based paint or lead-based paint hazards in the housing, or an indication that no such records exist, in the lease contracts for the following units: 73 Bartlett Street #1; 141 Bartlett Street #1; 141 Bartlett Street #2; 166 Bartlett Street #1; 166 Bartlett Street #2; Bartlett Street #3; 184 Bartlett Street #2; 184 Bartlett Street 3rd floor front; and 182 Blake Street #3.
29. I conclude that Respondent's failure to provide an EPA-approved lead hazard information pamphlet to the lessees of 184 Bartlett Street #1 and 184 Bartlett Street 3rd floor front, as required by 40 C.F.R. § 745.107(a)(1), constitutes two violations of Section 409 of TSCA, 15 U.S.C. § 2689.
30. I conclude that Respondent's failure to disclose the presence of known lead-based paint and/or lead-based paint hazards in the contract leases for 73 Bartlett Street #1, 141 Bartlett Street #1, 141 Bartlett Street #2, 166 Bartlett Street #1, 166 Bartlett Street #2, 166 Bartlett Street #3, 184 Bartlett Street #2, 184 Bartlett Street 3rd floor front, and 182 Blake Street #3, as required by 40 C.F.R. § 745.113(b)(2), constitutes nine violations of Section 409 of TSCA, 15 U.S.C. § 2689.

31. I conclude that Respondent's failure to list any records or reports that pertain to lead-based paint or lead-based paint hazards in the contract leases for 73 Bartlett Street #1, 141 Bartlett Street #1, 141 Bartlett Street #2, 166 Bartlett Street #1, 166 Bartlett Street #2, Bartlett Street #3, 184 Bartlett Street #2, 184 Bartlett Street 3rd floor front, and 182 Blake Street #3, as required by 40 C.F.R. § 745.113(b)(3), constitutes nine violations of Section 409 of TSCA, 15 U.S.C. § 2689.

#### **DETERMINATION OF THE TSCA PENALTY AMOUNT**

Service to Respondent was complete on March 13, 2018. The Answer to the Complaint was due 30 days after service of the Complaint, i.e., on April 13, 2018. 40 C.F.R. § 22.15(a). As of the date Complainant filed the Motion for Default Order, December 19, 2018, Complainant had neither received an Answer nor received a request for an extension of time to file an Answer. Therefore, all of the facts alleged by the Complainant shall be deemed admitted against Respondent, and the Respondent may be found in default. 40 C.F.R. § 22.17(a).

Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to consider the following factors in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation of violations 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 other such matters as justice may require.

Violations of section 409 of TSCA, 15 U.S.C. § 2689, subject Respondent to civil penalties under section 16(a) of TSCA, 15 U.S.C. § 2615(a). Section 1018(b)(5) of the Disclosure Rule, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118(f), authorize the assessment of a civil penalty of up to \$10,000. The maximum amount was increased to \$11,000 in 2004 for each Disclosure Rule violation. 69 Fed. Reg. 7121, 7126 (February 13, 2004).



In addition, cost of living adjustments to statutory penalty amounts are required by the Federal Civil Penalties Inflation Adjustment Act, 28. U.S.C. § 2641 note, as amended by the Debt Collection Improvement Act, 31 U.S.C. § 3701 note. Accordingly, statutory penalty amounts for Disclosure Rule violations that occurred after December 6, 2013 but before November 2, 2015 must be adjusted by a 1.1518 multiplier. Cynthia Giles, Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation, p. 6 (December 6, 2013). Statutory penalties for violations that occurred after November 2, 2015, where penalties were assessed after January 15, 2018, must be adjusted by a 1.58136 multiplier. Susan Bodine, Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation, p. 14 (January 11, 2018); See 40 C.F.R. § 19.4; 83 Fed. Reg. 1192, 1193 (January 10, 2018).

EPA has issued guidelines to determine the severity of penalties imposed for violations of the Disclosure Rule. Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy (December 2007) (“DRPP Memo”). The DRPP Memo sets forth EPA's analysis of the TSCA statutory factors discussed above as they apply to violations of the Disclosure Rule and provides a calculation methodology for applying the statutory factors to particular matters. The DRPP Memo provides two components of a penalty calculation: (1) determination of a gravity-based penalty based on the nature, circumstances, and extent of harm that may result from a Respondent's violations, and (2) upward or downward adjustments of the gravity-based penalty in light of a Respondent's ability to pay the penalty, effect of the penalty on a Respondent's ability to continue to do business, any history of prior such violations, the degree of a Respondent's culpability, voluntary disclosures of violations by the Respondent, and such other matters as justice may require.

The DRPP Memo categorizes circumstances, which reflect the probability of harm resulting from a violation, into six levels. Level 1 and Level 2 violations reflect a high probability of harm, Level

3 and Level 4 violations reflect a medium probability of harm, and Level 5 and Level 6 violations reflect a low probability of harm.

The DRPP Memo also classifies harm into major, significant, or minor categories. In particular, the degree of harm caused by violations of 40 C.F.R. §§ 745.107(a)(1), 745.113(b)(2) and 745.113(b)(3) are measured by the age of the children and the presence of pregnant women living in the target housing. The harmful effects that lead can have on children under the age of six warrants a “major” extent factor, on children between the ages of six and eighteen a “significant” extent factor, and during the absence of children or pregnant women, a “minor” extent factor.

#### Analysis of the Penalty Calculation

Pursuant to Rule 22.17(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(c), with regard to the issuance of a Default Order, the relief proposed in the Complaint on Motion for Default shall be ordered unless it is "clearly inconsistent with the record of the proceeding or the Act." This provision also states that if a Default Order resolves all outstanding issue and claims in a proceeding, it shall constitute an Initial Decision. For purposes of calculating a civil penalty to be assessed in an Initial Decision, a Presiding Officer is required to determine the penalty based on the evidence in the record of the case and in accordance with any penalty criteria set forth in the underlying statute. 40 C.F.R. § 22.27(b). A Presiding Officer is also required to consider any applicable civil penalty guidelines. *Id.*

The following analysis of the penalty calculation for this matter is based upon the statutory factors, case-specific facts and DRPP Memo. The DRPP Memo provides a rational, consistent and equitable methodology for applying the TSCA statutory factors to the facts and circumstances of this matter.

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

Forty C.F.R. § 745.107(a)(1) requires a lessor to provide the lessee with an EPA-approved lead hazardous information pamphlet, “Protect your Family from Lead in the House.” Failure to provide the lessee with an EPA-approved lead hazardous information pamphlet, pursuant to 40 C.F.R. § 745.107(a)(1), results in a “high probability of impairing the purchaser’s or lessee’s ability to assess the information required to be disclosed.” DRPP Memo, Chapter 5: Calculating the Proposed Penalty and Appendix B Penalty Matrices, p. 27. As a result, a violation of 40 C.F.R. § 745.107(a)(1) is a Level 1 (high) violation.

Respondent failed to provide EPA-approved lead hazard information pamphlets during two lease transactions for target housing. The 141 Bartlett Street #1 violation, leased on August 13, 2015, involved was one child of eight years. Accordingly, a violation of 40 C.F.R. § 745.107(a)(1) for the 141 Bartlett Street #1 unit warrants a significant extent of harm factor. The DRPP Memo lists \$7,740 as the penalty for a Level 1, significant extent, violation. As discussed above, a penalty that occurred after December 6, 2013 but before November 2, 2015 must be adjusted by a 1.1518 multiplier.

There were two children of years 4 and 10 living in the unit at 184 Bartlett Street 3rd floor front, leased on March 24, 2016. Accordingly, a violation of 40 C.F.R. § 745.107(a)(1) for the 184 Bartlett Street 3rd floor front unit warrants a penalty for a Level 1, major extent, violation. The DRPP Memo lists \$11,000 as the penalty for a Level 1 major extent violation. As discussed above, statutory penalties for violations that occurred after November 2, 2015 for penalties assessed after January 15, 2018 must be adjusted by a 1.58136 multiplier.

Accordingly, the appropriate, adjusted penalties for Respondent’s 40 C.F.R. § 745.107(a)(1) violations are:

- 141 Bartlett Street #1:  $\$7,740 \times 1.1518 = \$8,915$ , and
- 184 Bartlett Street 3rd floor, front:  $\$11,000 \times 1.58136 = \$17,395$ .

I conclude that a \$26,310 penalty, which reflects the legal requirements and policy considerations discussed above, is an appropriate maximum penalty for Respondent's two 40 C.F.R. § 745.107(a)(1) violations.

Count II: Failure of Respondent to Include a Statement by the Lessor Disclosing the Presence of Known LBP or Hazards, or Lack of Knowledge Thereof

Forty C.F.R. § 745.113(b)(2) requires the lessor to include, as an attachment or within the contract to lease target housing, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. Failure to provide this disclosure statement results in a "medium probability of impairing the purchaser's or lessee's ability to assess the information required to be disclosed." DRPP Memo, Chapter 5: Calculating the Proposed Penalty and Appendix B Penalty Matrices, p. 27. As a result, a violation of 40 C.F.R. § 745.113(b)(2) is a Level 3 (medium) violation.

According to the DRPP Memo, the extent of the harm caused by a violation of 40 C.F.R. § 745.113(b)(2) is measured by the age of the children and the presence of pregnant women living in the target housing. The harmful effects that lead can have on children under the age of six warrants a "major" extent factor, on children between the ages of six and eighteen a "significant" extent factor, and during the absence of children or pregnant women a "minor" extent factor.

The Respondent failed to disclose the presence of known lead-based paint and/or lead-based paint hazards or by not indicating that no knowledge exists to the residents of nine units of target housing. There were no children or pregnant women in the units at 73 Bartlett Street #1, leased on August 6, 2015, 141 Bartlett Street #2, leased on December 15, 2014, 166 Bartlett Street #2, leased on March 16, 2015 and 184 Bartlett Street #2, leased on August 31, 2015. Accordingly, violations of 40 C.F.R. §745.113(b)(2) for these units warrant a minor extent of harm factor. The DRPP Memo imposes a \$770 penalty for Level 3 minor extent violations.

There was one child of eight years living in the unit at 141 Bartlett Street #1, leased on August 13, 2015. There were three children of years seven, nine and fourteen living in the unit at 166 Bartlett Street #1, leased on October 6, 2015. There was one child of seventeen years living in the unit at 182 Blake Street #3, leased on August 19, 2015. Violations of 40 C.F.R. § 745.113(b)(2) for these units warrant a significant extent of harm factor. The DRPP Memo states that a \$5,160 penalty is appropriate for a Level 3 significant extent violations.

There was one child of six years living in the unit at 166 Bartlett Street #3, leased on February 2, 2015. There were two children of years 4 and 10 living in the unit at 184 Bartlett Street 3rd floor front, leased on March 24, 2016. Violations of 40 C.F.R. § 745.113(b)(2) for the 166 Bartlett Street #3 and the 184 Bartlett Street 3rd floor front units warrant a major extent of harm factor. The DRPP Memo lists \$7,740 as the appropriate penalty for a Level 3 major extent violation.

Penalties which occur after December 6, 2013 but before November 2, 2015 must be adjusted by a 1.1518 multiplier; penalties that occurred after November 2, 2015, where penalties were assessed after January 15, 2018 must be adjusted by a 1.58136 multiplier. Accordingly, a 1.1518 multiplier should be used to adjust the penalties for all of the violations except for the 184 Bartlett Street 3rd floor front violation. The 184 Bartlett Street 3rd floor front violation must be adjusted by a 1.58136 multiplier.

As a result, the maximum penalties to be assessed for each of Respondent's 40 C.F.R. § 745.107113(b)(2) violations are:

- 73 Bartlett Street #1:  $\$770 \times 1.1518 = \$887$
- 141 Bartlett Street #2:  $\$770 \times 1.1518 = \$887$
- 166 Bartlett Street #2:  $\$770 \times 1.1518 = \$887$
- 184 Bartlett Street #2:  $\$770 \times 1.1518 = \$887$
- 182 Blake Street #3:  $\$5,160 \times 1.1518 = \$5,943$



- 141 Bartlett Street #1:  $\$5,160 \times 1.1518 = \$5,943$
- 166 Bartlett Street #1:  $\$5,160 \times 1.1518 = \$5,943$
- 166 Bartlett Street #3:  $\$7,740 \times 1.1518 = \$8,915$
- 184 Bartlett Street 3rd floor front:  $\$7,740 \times 1.58136 = \$12,240$

I conclude that a \$42,532 penalty, which reflects the legal requirements and policy considerations discussed above, is the appropriate maximum penalty for the nine 40 C.F.R. § 745.113(b)(2) violations.

Count III: Failure of Respondent to Include a List of Any Records Available to the Lessor that Pertain to LBP or Hazards in the Housing, or the failure to Indicate that No Such Records Exist

Forty C.F.R. § 745.113(b)(3) requires the lessor to either (1) include, as an attachment or within the contract to lease target housing, a list of any records or reports available to the lessor that pertain to the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or (2) indicate that no such records are available. Failure to provide this list of records or reports results in a low probability of impairing the purchaser's or lessee's ability to assess the information required to be disclosed. DRPP Memo, Appendix B Penalty Matrices, p. 28. A violation of 40 C.F.R. § 745.113(b)(3) is deemed a Level 5 (low) violation.

According to the DRPP Memo and as discussed above, the extent of the harm caused by a violation of 40 C.F.R. § 745.113(b)(3) is measured by the age of the children and the presence of pregnant women living in the target housing. The harmful effects that lead can have on children under the age of six warrants a "major" extent factor, on children between the ages of six and eighteen a "significant" extent factor, and during the absence of children or pregnant women a "minor" extent factor.

The Respondent failed to list records or reports available to the residents of nine units of target housing. There were no children or pregnant women in the unit at 73 Bartlett Street #1, leased on August

6, 2015. There were no children or pregnant women in the unit at 141 Bartlett Street #2, leased on December 15, 2015. There were no children or pregnant women in the unit at 166 Bartlett Street #2, leased on March 16, 2015. There were no children or pregnant women in the unit at 184 Bartlett Street #2, leased on August 31, 2015. Accordingly, violations of 40 C.F.R. § 745.113(b)(3) for these four units, 73 Bartlett Street #1, 141 Bartlett Street #2, 166 Bartlett Street #2, and 184 Bartlett Street #2, each warrant a minor extent of harm factor. The DRPP Memo lists \$260 as the appropriate penalty for a Level 5 minor extent violation.

There was one child of eight years living in the unit at 141 Bartlett Street #1, leased on August 13, 2015. There were three children of years seven, nine and fourteen living in the unit at 166 Bartlett Street #1, leased on October 6, 2015. There was one child of seventeen years living in the unit at 182 Blake Street #3, leased on August 19, 2015. Violations of 40 C.F.R. § 745.113(b)(3) for 141 Bartlett Street #1, 166 Bartlett Street #1, and 182 Blake Street #3 therefore warrant a significant extent of harm factor. The DRPP Memo lists \$1,680 as the appropriate penalty for a Level 5 significant extent violation.

There was one child of six years living in the unit at 166 Bartlett Street #3, leased on February 2, 2015. There were two children of years four and ten living in the unit at 184 Bartlett Street 3rd floor front, leased on March 24, 2016. Violations of 40 C.F.R. § 745.113(b)(3) for 166 Bartlett Street #3 and 184 Bartlett Street 3rd floor front warrant a major extent of harm factor. The DRPP Memo lists \$2,580 as the appropriate penalty for a Level 5 major extent violation.

As described above, penalties which occur after December 6, 2013 but before November 2, 2015 must be adjusted by a 1.1518 multiplier. Penalties which occurred after November 2, 2015, where penalties were assessed after January 15, 2018, must be adjusted by a 1.58136 multiplier. The lease terms for all of the units listed above began before November 2, 2015, except for the 184 Bartlett Street,

third floor front lease, which began in 2016. Therefore, except for the 184 Bartlett Street, 3rd floor front penalty, the violations must be adjusted by the 1.1518 multiplier. The 184 Bartlett Street, 3rd floor front penalty must be adjusted by the 1.58136 multiplier.

Accordingly, the adjusted penalties for each of Respondent's 40 C.F.R. § 745.113(b)(3) violations are as follows:

- 73 Bartlett Street #1:  $\$260 \times 1.1518 = \$299$
- 141 Bartlett Street #2:  $\$260 \times 1.1518 = \$299$
- 166 Bartlett Street #2:  $\$260 \times 1.1518 = \$299$
- 184 Bartlett Street #2:  $\$260 \times 1.1518 = \$299$
- 182 Blake Street #3:  $\$1,680 \times 1.1518 = \$1,935$
- 166 Bartlett Street #1:  $\$1,680 \times 1.1518 = \$1,935$
- 141 Bartlett Street #1:  $\$1,680 \times 1.1518 = \$1,935$
- 166 Bartlett Street #3:  $\$2,580 \times 1.1518 = \$2,972$
- 184 Bartlett Street 3rd floor, front:  $\$2,580 \times 1.58136 = \$4,080$

I conclude that a \$14,053 penalty, which reflects the legal requirements and policy considerations discussed above, is the maximum appropriate penalty for the nine 40 C.F.R. § 745.113(b)(3) violations.

The DRPP Memo states that upward or downward adjustments may be made to the penalty by considering other factors, including but not limited to Respondent's ability to pay, degree of culpability, prior history and voluntary disclosures of violations. Complainant performed an internet search on Respondent and its principles (attached as Exhibit 3 to Complainant's Memorandum in Support of Motion for Default Order) and did not find any indication that Respondent is unable to pay the full penalty. The record does not reflect any information to indicate that Respondent has a prior history of



TSCA violations or received an economic benefit from the violations. In addition, there is no information in the record that indicates Respondent's degree of culpability, shows voluntary disclosures, or supports other mitigating factors. Accordingly, I know of no reason to make either upward or downward adjustments to the penalty.

#### Complainant's Penalty Calculation

In the Complaint and Motion for Default Order, Complainant proposed the assessment of a civil penalty in the amount of \$82,896.00 against Respondent for its violations of TSCA. For purposes of calculating the penalty, Complainant took into account the TSCA statutory factors by utilizing the penalty calculation methodology set forth in the DRPP. Utilizing the DRPP, Complainant calculated the proposed penalty of \$82,896 as follows:

Count I - Failure to Provide the EPA-approved Pamphlet = \$18,740.00

Count II - Failure to Include a Statement by the Lessor Disclosing the Presence of Known LBP or Hazards, or Lack of Knowledge Thereof = \$34,040.00

Count III - Failure to Include a List of Any Records Available to the Lessor that Pertain to LBP or Hazards in the Housing, or the Failure to Indicate that No Such Records Exist = \$11,240.00

Complainant applied inflation penalty adjustment multipliers to these amounts, which increased the total penalty to \$82,896.00.

As noted above, the Consolidated Rules provide that upon issuing a default order "[t]he relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or [the statute authorizing the proceeding]." 40 C.F.R. § 22.17(c). I find the rationale for the penalty calculation, as set forth in the Complaint and in the Complainant's Motion for Default, provides the factual, legal, and policy bases for the assessed penalty and is consistent with the record of the proceeding. I therefore assess a total penalty of \$82,896.00.

## **ORDER**

In accordance with Section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17, and based on the record, the findings of fact and conclusions of law set forth above. I hereby find that Respondent is in **DEFAULT** and liable for a total penalty of **\$82,896.00**.

**IT IS THEREFORE ORDERED** that Respondent, Investment Properties, shall, within thirty days after this Order becomes final under 40 C.F.R. § 22.27(c), submit by cashier's or certified check, payable to the United States Treasurer, payment in the amount of **\$82,896.00** in one of the following ways:

### **CHECK PAYMENTS:**

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

### **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 Fedwire message should read "D 68010727 Environmental Protection Agency"

### **OVERNIGHT MAIL:**

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1818

**ON LINE PAYMENT:**

There is now an On-Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open form and complete required fields.

Additional payment guidance is available at <https://www2.epa.gov/financial/makepayment>.

Respondent shall note on the check the title and docket number of this Administrative action.

Respondent shall serve photocopies of any check or written notification confirming electronic fund transfer or on-line payment to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
Five Post Office Square  
Mail Code 04-6  
Boston, MA 02190-3912

and

Audrey Zucker  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
Five Post Office Square, Suite 100  
Boston, MA 02190-3912

Each party shall bear its own costs in bringing or defending this action.

Should Investment Properties fail to pay the penalty specified above in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing.

Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent

claim. Interest will be assessed at the rate of the United States Treasury tax and loan rate, in accordance with 40 C.F.R. § 102.13(e).

This Default Order constitutes an Initial Decision, in accordance with 40 C.F.R. § 22.27(a) of the Consolidated Rules. This Initial Decision shall become a Final Order forty five days after its service upon a Party, and without further proceedings unless: (1) a party moves to reopen the hearing within twenty days after service of this Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) a party appeals the Initial Decision to the Environmental Appeals Board within thirty days after this Initial Decision is served upon the parties; (3) a party moves to set aside a Default Order that constitutes an Initial Decision; or (4) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

Within thirty days after the Initial Decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. 40 C.F.R. § 22.27(a). If a party intends to file a notice of appeal to the Environmental Appeals Board, it should be sent to the following address:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board (MC 1103B)  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Where a Respondent fails to appeal an Initial Decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30 of the Consolidated Rules, and that Initial Decision becomes a Final Order pursuant to 40 C.F.R. § 22.27(c) of the Consolidated Rules, Respondent waives its right to judicial review.

**SO ORDERED, this 23rd Day of May 2019.**

A handwritten signature in black ink, appearing to read "LeAnn Jensen", written over a horizontal line.

LeAnn Jensen  
EPA Region 1 Regional Judicial Officer/Presiding Officer

In the Matter of Investment Properties, L.L.C.  
Docket No. TSCA-01-2018-0017

**CERTIFICATE OF SERVICE**

I certify that on this 23<sup>rd</sup> day of May, 2019 the original foregoing Order was filed with Regional Hearing Clerk, a copy was hand-delivered to Counsel for Complainant, and a copy was mailed by certified mail, return receipt requested, to Counsel for Respondent.

5/23/19  
Date

Wanda I. Santiago  
Wanda I. Santiago  
Paralegal/Regional Hearing Clerk  
U.S. EPA Region I  
5 Post Office Square, Suite 100  
Mail code (ORC 4-6)  
Boston, MA 02109-3912

**Counsel for Respondent:**

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