

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 one (1) written lease agreement associated with the real property situated at 1202 Isabella Street, Williamsport, Pennsylvania, described more fully in Paragraph 18 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 “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/cm²] or 0.5 percent by weight.
3. 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.

4. 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 particular State by EPA.
5. 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.
6. 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.
7. 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.

8. 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 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 or more persons.
9. 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.
10. Pursuant to 40 C.F.R. § 745.107(a)(1), the lessor must provide to a lessee of target housing an EPA-approved lead hazard information pamphlet prior to the lessee being obligated under contract to lease the target housing. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet that has been approved for use by EPA in the state in which the target housing is located.
11. Pursuant to 40 C.F.R. § 745.107(a)(2), before the lessee is obligated under any contract to lease target housing, the lessor shall disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased. 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.

12. Pursuant to 40 C.F.R. § 745.107(a)(3), in pertinent part, the lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased and the existence of any available records or reports pertaining to 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. Pursuant to 40 C.F.R. § 745.107(a)(4), before the lessee is obligated under any contract to lease target housing, the lessor shall provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. At all times relevant to this Complaint, William R. Oates, Jr. (hereinafter "Respondent")

was an “owner” and “lessor”, as those terms are defined in 40 C.F.R. § 745.103, of the housing unit located at 1202 Isabella Court, Williamsport, Pennsylvania (hereinafter referred to as the “Target Housing”), as described further below, which was the subject of a lease transaction dated October 5, 2007.

15. At all times relevant to the violations alleged herein, the Target Housing consisted of real property on which there was situated one building used as the home or residence for one or more persons.
16. At all times relevant to the violations alleged herein, the building situated on the real property located at the Target Housing was housing constructed prior to 1978.
17. At all times relevant to the violations alleged herein, the building situated on the real property located at the Target Housing 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.
18. At all times relevant to the violations alleged herein, the building situated on the real property located at the Target Housing contained one or more “residential dwelling(s)” 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.
19. Respondent, via an agent (the “Agent”), entered into a written contract, dated October 5, 2007 (hereinafter referred to as the “Lease Transaction”), with one or more “lessee[s],” as that term is defined at 40 C.F.R. § 745.103, for the purpose of renting or leasing the

Target Housing.

20. The Lease Transaction was not an exempt transaction under 40 C.F.R. § 745.101.

IV. VIOLATIONS

Count I

(Violation of 40 C.F.R. § 745.107(a)(2))

21. The allegations contained in paragraphs 1 through 20, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
22. Prior to the execution of the Lease Transaction, the Respondent knew that lead-based paint and/or lead-based paint hazards existed in the Target Housing.
23. At no time before any lessee of the Target Housing became obligated to rent and/or lease such Target Housing pursuant to the Lease Transaction did the Respondent disclose to any such lessee the presence of known lead-based paint and/or lead-based paint hazards in the target housing or disclose to any such lessee information that was then available to the Respondent concerning known lead-based paint and/or lead-based paint hazards in the Target Housing, such as the basis for the determination that lead-based paint existed therein, the location of the lead-based paint within the Target Housing or the condition of the painted surfaces within the Target Housing, as required by 40 C.F.R. § 745.107(a)(2).
24. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to comply with 40 C.F.R. § 745.107(a)(2) with respect to the Lease Transaction constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

Count II

(Violations of 40 C.F.R. § 745.107(a)(3))

25. The allegations contained in Paragraphs 1 through 24, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
26. Prior to the execution of the Lease Transaction, records and/or reports were available to the Respondent pertaining to lead-based paint in the Target Housing.
27. At no time before any lessee of the Target Housing became obligated to rent and/or lease such Target Housing pursuant to the Lease Transaction did the Respondent disclose to the Agent for such Lease Transaction the existence of records and/or reports pertaining to lead-based paint in the Target Housing that were available to the Respondent.
28. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to comply with 40 C.F.R. § 745.107(a)(3) with respect to the Lease Transaction constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

Count III

(Violations of 40 C.F.R. § 745.107(a)(4))

29. The allegations contained in Paragraphs 1 through 28, above, of this Complaint are incorporated by reference herein as though fully set forth at length herein.
30. Prior to the execution of the Lease Transaction, records and/or reports were available to the Respondent pertaining to lead-based paint in the Target Housing.
31. At no time before any lessee of the Target Housing became obligated to rent and/or lease such Target Housing pursuant to the Lease Transaction did the Respondent provide to any such lessee those records and/or reports pertaining to lead-based paint in the Target

Housing that were available to the Respondent.

32. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to comply with 40 C.F.R. § 745.107(a)(4) with respect to the Lease Transaction constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

V. PROPOSED 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.

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 will take 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* ("ERP"), dated December 2007, a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated

above to particular cases. The ERP represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the Complainant's civil penalty proposal is contested through the hearing process described below, Complainant is prepared to offer a statutory basis for the elements of the ERP, as well as for the amount and nature of the civil penalty proposed.

Complainant proposes the assessment, against Respondent, of a civil penalty of up to \$11,000 for each violation alleged in this Complaint. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty amount at this time, but will do so at a later date after an exchange of information has occurred. See, 40 C.F.R. § 22.19(a)(4). As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, any facts and circumstances unknown to Complainant at the time of issuance of this Complaint that become known after the Complaint is issued including Respondent's ability to pay the proposed civil penalty assessed in this Complaint. With respect to Respondent's ability to pay the proposed penalty, it is the Respondent's responsibility to provide to Complainant financial information to support and establish a claim of an inability to pay the proposed penalty. Complainant's proposal of the assessment of a civil penalty against the Respondent does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of the violations for which the assessment of a civil penalty is sought is provided below. This explanation is based upon the facts known to the Complainant at the time this Complaint is

issued, Complainant's consideration of the statutory penalty factors enumerated above and the relevant guidance provided in the ERP.

1. Explanation of Circumstance Level and Extent of Violation

A. Circumstance Levels:

a) 40 C.F.R. § 745.107(a)(2) violation: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.107(a)(2) 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 1 violations in the ERP. As a result, the violation alleged in Count I of this Complaint may be characterized as a Circumstance Level 1 violation for purposes of calculating an appropriate penalty.

b) 40 C.F.R. § 745.107(a)(3) violation: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.107(a)(3) 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 1 violations in the ERP. As a result, the violation alleged in Count II of this Complaint may be characterized as a Circumstance Level 1 violation for purposes of calculating an appropriate penalty.

c) 40 C.F.R. § 745.107(a)(4) violation: Violations of the disclosure requirements set forth at 40 C.F.R. § 745.107(a)(4) 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 1 violations in the ERP. As a result, the violation alleged in Count III of this Complaint may be characterized as a Circumstance Level 1 violation for purposes of calculating an appropriate penalty.

B. Extent Level:

a) Major Violations: Defined as “[p]otential for ‘serious’ damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees of Target Housing in which a child under six years of age or pregnant woman lives is considered a “Major Extent” violation under the ERP. Respondent failed to provide disclosures and/or certifications to the lessees and the Agent in the Lease Transaction for the Target Housing in which EPA has determined a pregnant woman was present. Accordingly, the Disclosure Rule violations associated with this Lease Transaction, as alleged in Counts I-III, respectively, are all “Major Extent” violations.

QUICK RESOLUTION

In accordance with the Consolidated Rules of Practice at 40 C.F.R. § 22.14(a)(4)(ii), EPA has not demanded a specific penalty in this Complaint. Complainant will file in this proceeding a document specifying a proposed penalty within fifteen (15) days after Respondent files its

prehearing information exchange as provided in the Consolidated Rules of Practice at 40 C.F.R. § 22.19(a)(4). Thereafter, in accordance with the Consolidated Rules of Practice, 40 C.F.R. §22.18(A), Respondent may resolve this proceeding at any time by paying in full the specific penalty which will be proposed in Complainant's prehearing exchange, as specified below, and filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. Payment of the full penalty in accordance with this paragraph shall be made in the following manner:

- a. All payments by the Respondent shall include Respondent's full name and address and the EPA Docket Number (TSCA-03-2010-0249).
- b. All checks shall be made payable to "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Eric Volck 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

- g. All payments made through the automatic clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA No. 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical Location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact, Jesse White, 301-887-6548 or REX, 1-866-234-5681

- h. On-line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

To ensure proper crediting of the payment, it must reference the Respondent's name and address and the EPA Docket Number (TSCA-03-2010-0249) of this Complaint. A notice of payment, including a copy of the check or documentation of electronic wire transfer, shall be sent simultaneously to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and to Jeffrey S. Nast (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 the settling Respondent. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations in the Complaint and to appeal the Final Order.

NOTICE AND OPPORTUNITY TO REQUEST A HEARING

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, 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 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 or explained in the Answer will be considered admitted.

If 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 Respondent in this Complaint and a waiver of 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 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 Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Jeffrey S. Nast, 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, 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 Respondent of its 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 filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

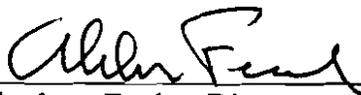
If Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Mr. Nast at (215) 814-2652 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following 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.

3/22/10
Date


Abraham Ferdas, Director
Land and Chemicals Division

In re: Oates

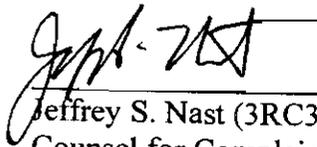
Docket No. TSCA-03-2010-0249

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint, Docket No. TSCA-03-2010-0249, and associated enclosures, have been filed with the EPA Region III Regional Hearing Clerk, and that copies of the same were sent via Federal Express Overnight and USPS First Class to the following:

William R. Oates, Jr.
4111 Johnny Knoll
Winston-Salem, NC 27107

3/24/10
Date



Jeffrey S. Nast (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2652