

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
MAY 28 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of: )  
)  
Mardaph II, LLC, Mardaph III, )  
LLC, and Vinnie Wilson, )  
Cincinnati, Ohio )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. TSCA-05-2008-0019

**ORDER TO FILE STATUS REPORT**

This is an administrative action alleging that Respondents Mardaph II, LLC, Mardaph III, LLC, and Vinnie Wilson violated the Toxic Substances Control Act (“TSCA”). Specifically, the Complaint alleges that the two corporations (as lessors) and Ms. Wilson (as the owner and/or agent for the owner of rental units) failed to provide their lessees with the required disclosures regarding the possible presence of lead paint in a total of ten residential rental properties. The Complaint alleges 10 violations against Mardaph II, LLC, seeking a penalty of \$30,320; 20 violations against Mardaph III, LLC, seeking a penalty of \$26,840; and 47 violations against Vinnie Wilson, seeking a penalty of \$91,090. Respondent Wilson has filed an Answer to the Complaint on her behalf only.

Typically, under the Consolidated Rules of Practice (CROP) which govern this action found at 40 C.F.R. Part 22, once an answer is filed, the Regional Hearing Clerk refers the case to the Office of Administrative Law Judges (OALJ). *See* 40 C.F.R. § 22.21(a). The Chief Administrative Law Judge then serves as Presiding Officer or assigns another Administrative Law Judge (ALJ) as Presiding Officer. In cases involving multiple respondents where not all have filed an answer, the literal application of this Rule can lead to problems. Commencement of the Alternative Dispute Resolution (ADR) process with only one respondent can result in delay and inefficiency if another respondent later answers and requests ADR. A problem of dual jurisdiction can result if complainant files a motion where the complaint and answer of one respondent have been assigned to an ALJ and the unanswered complaint as to another respondent is still pending before the Regional Judicial Officer (RJO).

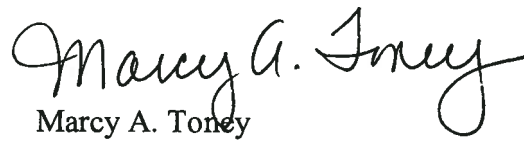
To avoid these problems, OALJ has requested that Regional Hearing Clerks not send a case to OALJ until *all* respondents in the case have answered the complaint or the liability of the non-answering respondent has been otherwise determined. This interpretation of Rule 22.21(a) is supported by Rule 22.2 which provides that as used in the CROP, “words in the singular also include the plural. . . .” Thus, 40 C.F.R. § 22.21(a) can be interpreted as “When *answers* are filed, the Regional Hearing clerk shall

forward a copy of the complaint, *answers* and any other documents filed in the proceeding” to the OALJ.

Respondents Mardaph II and Mardaph III have not answered the Complaint. Unless some action is taken by Complainant against these Respondents, this case could remain on the Regional Judicial Officer’s docket indefinitely. Consequently, Complainant is hereby ORDERED on or before **June 11, 2009**, to file a status report informing the Presiding Officer how it intends to proceed against these two Respondents.

IT IS SO ORDERED.

Dated: May 28, 2009



Marcy A. Toney  
Presiding Officer

RECEIVED  
MAY 28 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of Mardaph II, LLC, Mardaph II, LLC, and Vinnie Wilson, Respondents.  
Docket No. TSCA-05-2008-0019

**RECEIVED**  
MAY 28 2009

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

CERTIFICATE OF SERVICE

I certify that the foregoing Order to File Status Report, dated May 28, 2009, was sent this day in the following manner:

Original hand delivered to:

Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 5 (E-19J)  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

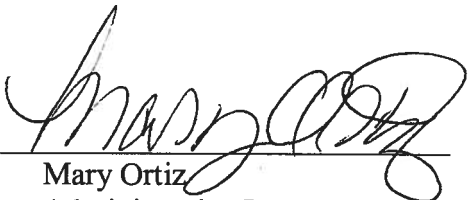
Copy hand delivered to  
Attorney for Complainant:

Peter Felitti  
U. S. Environmental Protection  
Agency, Region 5 (C-14J)  
Office of Regional Counsel  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copy by U.S. Mail to:

Ms. Vinnie Wilson  
P.O. Box 317639  
Cincinnati, Ohio 45231

Dated: 5-28-09

By:   
Mary Ortiz  
Administrative Program Assistant