

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

2008 AUG 19 P 4: 47

EPA ORC
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Biren Properties, Inc.)
88 McGregor Street, Suite 104,)
Manchester, New Hampshire)

Respondent.)

Proceeding under Section 16(a) of the)
of the Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

Docket Number TSCA-01-2008-0066

**ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR A HEARING**

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22. The Complainant is the Enforcement Manager, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1.

II. NATURE OF THE ACTION

2. The Respondent in this action, Biren Properties, Inc. (“Biren” or “Respondent”), is hereby notified of the Enforcement Manager’s determination that the Respondent has violated

TSCA Section 409, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”). Complainant seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by Complainant of civil and/or criminal penalties. In support of its Complaint, Complainant alleges the following:

III. STATUTORY AND REGULATORY BACKGROUND

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children; that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint; and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account in the rental of homes and apartments.

4. In 1996, the United States Environmental Protection Agency (“EPA”) promulgated regulations to implement the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart F.

5. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the housing stock addressed by the Act is termed “target housing.” “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled, or any 0-bedroom dwelling.

6. The implementing regulations set forth at 40 C.F.R. Part 745, Subpart F, require

lessors of target housing to, among other things:

- (a) provide to lessees a lead hazard information pamphlet;
- (b) disclose to lessees, prior to their becoming obligated under any contract to lease target housing, the presence of any known lead-based paint and/or lead-based paint hazards, and provide to lessees records or reports available to the lessor pertaining to lead-based paint or lead-based paint hazards in the housing; and,
- (c) ensure that the contract to lease includes the following items:
 - (i) a Lead Warning Statement;
 - (ii) a statement by the lessor disclosing the presence of known lead-based paint or lead-based paint hazards, or indicating no knowledge thereof.

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with the Subpart F disclosure requirements is a violation of TSCA Section 409, 15 U.S.C. § 2689.

8. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of TSCA Section 409, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty.

9. Section 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation occurring after July 28, 1997, shall be no more than \$11,000.

IV. GENERAL ALLEGATIONS

10. Respondent is currently and was, at the time of the violations alleged in this Complaint, a corporation organized under the laws of the State of New Hampshire.

11. At all times relevant to this Complaint, Respondent owned and offered for lease

approximately 27 apartments in six multi-unit residential properties, located at the following addresses in Manchester, New Hampshire: 248 Green Street, 257-259 Manchester Street, 304 Manchester Street, 20-22 Mitchell Street, 151 Ray Street and 191 Walnut Street/126 Harrison Street.

12. Biren is a “lessor” as that term is defined in 40 C.F.R. § 745.103.

13. Respondent leased the following units to the lessees listed below, on the dates set forth below:

Address/Unit	Rental Date	Tenant Name	Age of Youngest Person Residing in Unit
248 Green St., Apt. 1, Manchester, NH	9/2007	Mohemad Molhemad	1 year old
259 Manchester St., 1 st Floor, Manchester, NH	1/1/2007	Paulay Ali	Adult
304 Manchester St., 2 nd Floor, Manchester, NH	1/28/2007	Shamsa Osman	Adult
191 Walnut St./126 Harrison St., 1 st Floor, Manchester, NH	6/1/2007	Lauren Grevi	Adult

14. The apartments referred to in Paragraph 13 are and were, at the time of the violations alleged in this Complaint, “target housing,” as defined in 40 C.F.R. § 745.103. The apartments do not qualify for exemptions to the provisions of the Act or the Disclosure Rule.

15. On November 5, 2004, the Manchester Department of Health issued a Notice Letter to Biren which stated that a child aged six years or under and who resided at 248 Green St., Manchester, NH was reported as having an elevated blood-lead level of between 10 and 19 ug/dl (micrograms of lead per deciliter of blood). The Notice Letter warned Biren of the risks

associated with exposure to lead-based paint and included information on controlling potential lead exposure hazards.

16. The apartment building located at 257-259 Manchester St., Manchester, NH, has six rental units. The apartments can be accessed through a common entrance on the side of the building facing Manchester Street.

17. On November 8, 2005, the State of New Hampshire, Department of Public Health and Human Services, Division of Public Health Services (“NHDPHS”), issued an Order of Lead Hazard Reduction (Docket Number DPHS No. 21-05-L) regarding 257-259 Manchester St., Manchester, NH. The Order stated that the NHDPHS conducted a lead paint inspection at the property because a lead-poisoned child was found to be living in 257 Manchester St., Apt. 1. The Order also stated that a representative from NHDPHS detected the presence of lead-based paint at the property and ordered Biren to reduce lead exposure hazards at the property. A Lead Investigation Survey Form prepared by NHDPHS dated November 3, 2005, was sent as an attachment to the Order. The Lead Investigation Survey Form described the locations where lead-based paint was detected at the property.

18. In response to the Order, a *Lead Based Paint Inspection Report* was prepared by Alpha Lead Consultants, Inc. on behalf of Biren, dated January 20, 2006. The report states that lead-based paint was found to be present in 257 Manchester Street, Apt. 1, in common areas and on the exterior of the building.

19. On March 21, 2006, and June 19, 2006, NHDPHS issued letters recognizing that Certificates of Compliance of Abatement had been issued regarding the interior of 257

Manchester St., Apt. 1, and interior common areas at 257 Manchester St., respectively.

20. On June 19, 2006, NHDPHS issued a Notice of Administrative Fine of \$500.00 to Biren for failing to reduce lead exposure hazards on exterior surfaces and in soils at 257-259 Manchester St. in a timely manner. On March 29, 2007, NHDPHS issued a Final Notice of Administrative Fine to Biren for failing to comply with the June 19, 2006 Notice of Administrative Fine to reduce lead exposure hazards on exterior surfaces and in soils at 257-259 Manchester St. in a timely manner, as well as pay the original fine of \$500.00. On May 3, 2007, NHDPHS filed a Petition for Preliminary and Permanent Injunctive Relief in the Superior Court of New Hampshire against Biren for its failure to comply with the Administrative Order issued on November 8, 2005 to reduce lead exposure hazards on exterior surfaces and in soils at 257-259 Manchester St. in a timely manner and pay the original fine of \$500.00.

21. On May 22, 2007, NHDPHS issued a letter recognizing that a Certificate of Compliance of Abatement had been issued regarding the exterior and soils at 257-259 Manchester Street. On May 31, 2007, NHDPHS withdrew the Petition for Preliminary and Permanent Injunctive Relief against Biren because had Biren complied with the requirements of the November 8, 2005 Administrative Order.

22. On or about November 17, 2006, NHDPHS issued a second Order of Lead Hazard Reduction (Docket Number DPHS No. 23-06-L) regarding 257-259 Manchester St., Manchester, NH. The Order stated that the NHDPHS conducted a lead paint inspection at the property because a lead poisoned child was found to be living in 259 Manchester St., Apt. 2. The Order also stated that a representative from NHDPHS detected the presence of lead-based paint at the

property and ordered Biren to reduce lead exposure hazards at the property. A Lead Investigation Survey Form prepared by NHDPHS dated November 3, 2006, was sent as an attachment to the Order. The Lead Investigation Survey Form described the locations where lead-based paint was detected at the property.

23. An inspection report prepared by LeadTech, Inc. on behalf of Biren dated December 15, 2006, states that lead-based paint was found to be present in 259 Manchester St., Apt. 2, interior common areas, and on interior and exterior surfaces.

24. On August 16, 2007, NHDPHS issued a Notice of Administrative Fine of \$500.00 to Biren for failing to reduce lead exposure hazards on interior and exterior surfaces, including soils, at 259 Manchester St. in a timely manner. On September 26, 2007, NHDPHS issued an Assessment of Additional Penalties for Continued Failure to Comply with Order of Lead Hazard Reduction to Biren. On December 4, 2007, NHDPHS issued a letter recognizing that a Certificate of Compliance of Abatement had been issued regarding the interior of 259 Manchester Street.

25. On March 14, 2006, NHDPHS issued a letter to Biren stating that a representative from NHDPHS inspected 304 Manchester St., Apt. 2., Manchester, NH. The letter stated that a child with a persistent elevated blood lead level resided in the rental unit. The letter also informed Biren that lead-based paint was found to be present in numerous locations in the rental unit. A Lead Investigation Survey Form prepared by NHDPHS dated February 9, 2006, was sent as an attachment to the letter. The Lead Investigation Survey Form described the locations where lead-based paint was detected at the property.

26. The apartment building located at 191 Walnut Street/126 Harrison St., Manchester, NH, has six rental units. The apartments can be accessed through a common entrance on the side of the building facing Harrison Street.

27. On or about July 12, 2004, NHDPHS issued an Order of Lead Hazard Reduction (Docket Number DPHS No. 06-04-L) regarding 126 Harrison St., Manchester, NH. The Order stated that the NHDPHS conducted a lead paint inspection at the property because a lead poisoned child was found to be living in 126 Harrison St., Apt. 3. The Order also stated that a representative from NHDPHS detected the presence of lead-based paint at the property and ordered Biren to reduce lead exposure hazards at the property. A Lead Investigation Survey Form prepared by NHDPHS dated June 22, 2004, was sent as an attachment to the Order. The Lead Investigation Survey Form described the locations where lead-based paint was detected at the property.

28. On or about October 11, 2004, NHDPHS issued a second Order of Lead Hazard Reduction (Docket Number DPHS No. 19-04-L) regarding 126 Harrison St., Manchester, NH. The Order stated that the NHDPHS conducted a lead paint inspection at the property because a lead poisoned child was found to be living in 126 Harrison St., third floor, Apt. 5. The Order also stated that a representative from NHDPHS detected the presence of lead-based paint at the property and ordered Biren to reduce lead exposure hazards at the property. A Lead Investigation Survey Form prepared by NHDPHS dated September 28, 2004, was sent as an attachment to the Order. The Lead Investigation Survey Form described the locations where lead-based paint was detected at the property.

29. On March 22, 2005, NHDPHS issued a letter recognizing that Certificates of Compliance of Abatement had been issued regarding the interior of 126 Harrison St., Apt. 3 and Third Floor (Apt. 5), common areas, exterior and grounds.

30. On May 26, 2005, Biren's contractor, LeadTech, Inc. Testing Services prepared a Certificate of Lead Safe for 126 Harrison St., Third Floor, Apt. 5.

31. On August 10, 2007, authorized representatives of EPA conducted a compliance inspection at Biren's office located at 88 McGregor Street, Suite 104, Manchester, NH to evaluate Biren's compliance with the Disclosure Rule.

32. During the inspection, Biren's property manager at the time, Tony Mansur, stated that he provided information required to be disclosed by the Disclosure Rule to tenants who have children aged 18 years and younger, but did not provide this information to tenants without children. Mr. Mansur served as Biren's property manager from May 2006 to August 2007.

33. On October 26, 2007, EPA issued a TSCA subpoena to Biren (Docket Number TSCA-SP-2008-02). The subpoena requested information necessary to assess Biren's compliance with the Disclosure Rule.

34. Biren submitted a response to the subpoena on December 6, 2007. Biren submitted additional information responsive to the subpoena on April 21, 2008.

V. VIOLATIONS

35. EPA identified the following violations of the Act and the Disclosure Rule based on documents and information provided to EPA by Biren during EPA's compliance inspection,

information collected by EPA from files maintained by NHDPHS and documents and information provided to EPA by Biren in response to EPA's subpoena:

Count I – Failure to provide lessees with an EPA-approved lead hazard information pamphlet.

36. Paragraphs 1 through 35 above are incorporated by reference as if fully set forth herein.

37. Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor is required to provide the lessee, before the lessee is obligated under any contract to lease target housing, with an EPA-approved lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home* or an equivalent pamphlet that has been approved for use in particular states by EPA.

38. Respondent failed to provide the following lessees with an EPA-approved lead hazard information pamphlet prior to the lessees becoming obligated under a contract to lease target housing:

- a. Mohemad Molhemad, who rented 248 Green St., Apt. 1, Manchester, NH, beginning September 2007;
- b. Lauren Grevi, who rented 191 Walnut St./126 Harrison St., 1st Floor Rear, Manchester, NH, beginning June 1, 2007.

39. Respondent's failure to provide lessees of target housing with an EPA-approved lead hazard information pamphlet prior to the lessees becoming obligated under a contract to lease target housing on two (2) separate occasions constitutes two (2) violations of 40 C.F.R. § 745.107(a)(1), and TSCA Section 409, 15 U.S.C. § 2689.

Count II – Failure to disclose the presence of any known lead-based paint/lead-based paint hazards in target housing and/or provide available records of such.

40. Paragraphs 1 through 39 above are incorporated by reference as if fully set forth

herein.

41. Pursuant to 40 C.F.R. § 745.107(a)(2), a lessor is required to disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing before the lessee becomes obligated under the lease contract. The lessor shall also disclose any additional information available concerning 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.

42. Pursuant to 40 C.F.R. § 745.107(a)(4), a lessor is required to provide to the lessee 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 before the lessee becomes obligated under the lease contract. This requirement includes records or reports regarding common areas. The term “available records” includes records in the lessor’s possession or records that are reasonably obtainable by the lessor at the time of the disclosure.

43. Respondent failed to disclose to the following lessees the presence of known lead-based paint or lead-based paint hazards and/or failed to provide records or reports pertaining to lead-based paint or lead-based paint hazards prior to the lessees becoming obligated under a lease contract to lease target housing:

- a. Mohemad Molhemad, who rented 248 Green St., Apt. 1, Manchester, NH, beginning September 2007;
- b. Paulay Ali, who rented 259 Manchester St., 1st Floor, Manchester, NH, beginning January 1, 2007;
- c. Shamsa Osman, who rented 304 Manchester St., Apt. 2, Manchester, NH, beginning January 28, 2007;

- d. Lauren Grevi, who rented 191 Walnut St./126 Harrison St., 1st Floor Rear, Manchester, NH, beginning June 1, 2007.

44. Respondent failed to provide Mohemad Molhemad, prior to Mr. Molhemad becoming obligated under a lease contract, with the information and document regarding lead-based paint and/or lead-based paint hazards referenced in Paragraph 15, above.

45. Respondent failed to provide Paulay Ali, prior to Ms. Ali becoming obligated under a lease contract, with the information and documents regarding lead-based paint and/or lead-based paint hazards referenced in Paragraphs 17 through 24, above.

46. Respondent failed to provide Shamsa Osman, prior to Ms. Osman becoming obligated under a lease contract, with the information and documents regarding lead-based paint and/or lead-based paint hazards referenced in Paragraph 25, above.

47. Respondent failed to provide Lauren Grevi, prior to Ms. Grevi becoming obligated under a lease contract, with the information and documents regarding lead-based paint and/or lead-based paint hazards referenced in Paragraphs 27 through 30, above.

48. Respondent's failure to disclose the presence of known lead-based paint and/or lead-based paint hazards and/or failure to provide records or reports pertaining to lead-based paint or lead-based paint hazards to four (4) lessees, prior to the lessees becoming obligated under contracts to lease target housing, constitutes four (4) violations of 40 C.F.R. § 745.107(a)(2) and/or 40 C.F.R. § 745.107(a)(4), and TSCA Section 409, 15 U.S.C. § 2689.

Count III - Failure to include as an attachment to, or within a contract to lease target housing, the Lead Warning Statement.

49. Paragraphs 1 through 48 above are incorporated by reference as if fully set forth

herein.

50. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include as an attachment to, or within the contract, the Lead Warning Statement.

51. Respondent failed to include the Lead Warning Statement in or attached to its lease contracts with the lessees listed in Paragraph 38, above.

52. Respondent's failure to include the Lead Warning Statement as an attachment to, or within the contracts to lease target housing to the lessees listed in Paragraph 38 constitutes two (2) violations of 40 C.F.R. § 745.113(b)(1), and TSCA Section 409, 15 U.S.C. § 2689.

Count IV - Failure to include in the lease or as an attachment thereto a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof.

53. Paragraphs 1 through 52 above are incorporated by reference as if fully set forth herein.

54. Pursuant to 40 C.F.R. § 745.113(b)(2), a contract to lease target housing must include as an attachment to or within the lease 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.

55. Respondent 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 indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, in or attached to its contracts with the lessees listed in Paragraph 43, above.

56. Respondent's 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 indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as an attachment to or within the contracts to lease target housing to the lessees listed in Paragraph 43, constitutes four (4) violations of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

VI. PROPOSED PENALTY

57. A total civil penalty in the amount of \$54,200 is hereby proposed to be assessed against Respondent (see Attachment 1 to this Complaint explaining the rationale for these penalties). The proposed civil penalty has been determined in accordance with TSCA Section 16, 15 U.S.C. § 2615, which requires the Complainant to consider the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. The penalty also is calculated in accordance with the provisions of 40 C.F.R. § 745.118(f). To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), a copy of which is enclosed with this Complaint (see Attachment 2). This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. The proposed penalty was developed based upon the best information available to EPA at the time. The proposed penalty may be adjusted if Respondent establishes *bona fide* issues of ability to pay or other defenses relevant to the

appropriate amount of the penalty.

58. The provisions violated and the corresponding proposed penalties for Respondent are as follows:

<u>Provision Violated</u>	<u>Requirement</u>	<u>Penalty</u>
1) 40 C.F.R. § 745.107(a)(1)	Failure to provide an EPA-approved lead hazard information pamphlet.	\$13,580
2) 40 C.F.R. § 745.107(a)(2) and/or 40 C.F.R. § 745.107(a)(4)	Failure to disclose the presence of known lead-based paint and/or lead-based paint hazards and/or failure to provide records or reports pertaining to lead-based paint or lead-based paint hazards	\$18,740
3) 40 C.F.R. § 745.113(b)(1)	Failure to include as an attachment to, or within the contract to lease target housing, the Lead Warning Statement.	\$11,870
4) 40 C.F.R. § 745.113(b)(2)	Failure to include in the lease or as an attachment thereto, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof.	\$10,050
Total Penalty¹:		\$54,200

59. Respondent shall pay the civil penalty with a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on the check the docket number of this Complaint; EPA Docket No. TSCA-01-2008-0066. The check shall be forwarded

¹ The total proposed gravity-based penalty for the violations cited above is \$54,240. Pursuant to a memorandum from Thomas Skinner, dated September 21, 2004, the total gravity-based penalty for all counts in a particular matter should be rounded to the nearest unit of \$100.00. Therefore, the proposed gravity-based penalty for this matter is \$54,200.

to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

and

Peter M. DeCambre
Senior Enforcement Counsel
U.S. Environmental Protection Agency - Region 1
One Congress Street, Suite 1100 (SES)
Boston, Massachusetts 02114-2023

If payment is made within thirty (30) days of receipt of the Complaint, Respondent need not file an Answer. If Respondent agrees to pay the penalty but needs additional time, it may file a statement to that effect with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint. In that event, Respondent need not file an Answer and will be allowed sixty (60) days from receipt of the Complaint to pay the penalty. See 40 C.F.R. § 22.18(a).

60. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with all applicable requirements of federal law.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

61. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in

accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint, or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **In the event that Respondent intends to request a hearing, Respondent must file a written Answer to this Complaint within thirty (30) days of receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

Respondent shall serve copies of the Answer or other documents to EPA's attorney at the following address:

Peter M. DeCambre
Senior Enforcement Counsel
U.S. Environmental Protection Agency - Region 1
One Congress Street, Suite 1100 (SES)
Boston, Massachusetts 02114-2023

In its Answer, Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts Respondent intends to place at issue; and, (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

See 40 C.F.R. § 22.15 for the required contents of an Answer.

VIII. DEFAULT ORDER

62. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

IX. SETTLEMENT CONFERENCE

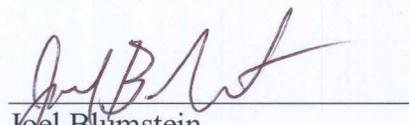
63. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region I. The issuance of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, or discretion included in the Agreement.

64. Please note that a request for an informal settlement conference does not extend the period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Peter M. DeCambre, Senior Enforcement Counsel, Office of Environmental Stewardship, EPA Region I, at the address cited

above or at (617) 918-1890. Mr. DeCambre has been designated to represent Complainant and receive service in this action.

65. The following documents are enclosed as Attachments with this Complaint:

1. Proposed Penalty Summary
2. Section 1018 Disclosure Rule Enforcement Response Policy.
3. Consolidated Rules of Practice



Joel Blumstein
Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100 (SEE)
Boston, MA 02114-2023

8/15/08
Date

ATTACHMENT 1

In the Matter of Biren Properties, Inc., Docket Number TSCA-01-2008-0066

PROPOSED PENALTY SUMMARY

Pursuant to EPA's December 2007 *Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), EPA proposes a civil penalty in the amount of fifty-four thousand two hundred dollars (\$54,200) to be assessed against Biren Properties, Inc. ("Respondent") as follows:

Count I - Failure to provide lessees with an EPA-approved lead hazard information pamphlet.

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires lessors to provide lessees an EPA-approved lead hazard information pamphlet. 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.

Circumstance Level: Failure to provide a lessee an EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.107(a)(1), results in a high probability of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondents failed to provide an EPA-approved lead hazard information pamphlet to the following lessees:

Address	Tenant(s)	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
248 Green St., Apt. 1, Manchester, NH	Mohemad Molhemad	9/2007	1 child under age 6	Major	\$11,000
191 Walnut St./126 Harrison St., 1 st Floor Rear, Manchester, NH	Lauren Grevi	6/1/2007	Adult	Minor	\$2,580
					Total: \$13,580

Count II - Failure to disclose to lessees the presence of any known lead-based paint/lead-based paint hazards in target housing and/or provide available records of such.

Provisions Violated: 40 C.F.R. § 745.107(a)(2) requires lessors to disclose to lessees the presence of any known lead-based paint and/or lead-based paint hazards in target housing. Lessors are also required to disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards, such as the basis for a determination that lead-based paint and/or lead-based paint hazards exist, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces. 40 C.F.R. § 745.107(a)(4) requires lessors to provide lessees with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multi-family 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.

Circumstance Level: Failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards represents the greatest deviation from the Section 1018 regulations. A failure to disclose known lead-based paint and/or lead-based paint hazards and/or provide records or reports regarding the presence lead-based paint and/or lead-based paint hazards has a high probability of impairing a lessee's ability to properly assess and weigh the factors associated with human health risk when leasing target housing and greatly increases the likelihood of exposure to lead-based paint hazards. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.107(a)(2) and/or a violation of 40 C.F.R. § 745.107(a)(4) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Biren failed to provide the following information and/or records and reports regarding lead-based paint and/or lead-based paint hazards:

- **248 Green St., Manchester, NH -**
 - Notice Letter from the Manchester Department of Health, dated November 5, 2004.
- **257-259 Manchester St., Manchester, NH -**
 - Order of Lead Hazard Reduction (Docket Number DPHS No. 21-05-L), dated November 8, 2005;
 - Lead Investigation Survey Form, dated November 3, 2005;
 - *Lead Based Paint Inspection Report* prepared by Alpha Lead Consultants, Inc., dated January 20, 2006;
 - NHDPHS letters dated March 21, 2006 and June 19, 2006 regarding Certificates of Compliance for the interior of 257 Manchester St., Apt. 1, and interior common areas of 257 Manchester St. and the Certificates of Compliance themselves;
 - Notice of Administrative Fine, dated June 19, 2006;
 - NHDPHS Final Notice of Administrative Fine to Biren dated March 29, 2007;
 - Petition for Preliminary and Permanent Injunctive Relief dated May 3, 2007 for failing to comply with the Notice of Administrative Fine;
 - NHDPHS letter dated May 22, 2007 a Certificate of Compliance for the exterior and soils at 257-259 Manchester St. and the Certificate of Compliance itself;
 - Order of Lead Hazard Reduction (Docket Number DPHS No. 23-06-L), dated November 17, 2006;
 - Lead Investigation Survey Form, dated November 3, 2006;
 - Inspection report prepared by LeadTech, Inc., dated December 15, 2006;
 - NHDPHS Notice of Administrative Fine dated August 16, 2007;
 - NHDPHS Assessment of Additional Penalties for Continued Failure to Comply with Order of Lead Hazard Reduction dated September 26, 2007; and,
 - NHDPHS letter dated December 4, 2007 regarding a Certificate of Compliance for the interior of 259 Manchester St. and the Certificate of Compliance itself.
- **304 Manchester St., Manchester, NH -** NHDPHS letter, dated March 14, 2006.
- **191 Walnut St./126 Harrison St., Manchester, NH -**
 - Order of Lead Hazard Reduction (Docket Number DPHS No. 06-04-L), dated July 12, 2004;
 - Lead Investigation Survey Form, dated June 22, 2004;
 - Order of Lead Hazard Reduction (Docket Number DPHS No. 19-04-L), dated October 11, 2004;

- Lead Investigation Survey Form, dated September 28, 2004;
- NHDPHS letter dated March 22, 2005 regarding Certificates of Compliances for the interior of 126 Harrison St., Apt. 3 and Third Floor (Apt. 5), common areas, exterior and grounds; and,
- Certificate of Lead Safe prepared by LeadTech, Inc., dated May 26, 2005.

Address	Tenant(s)	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
248 Green St., Apt. 1, Manchester, NH	Mohemad Molhemad	9/2007	1 child under age 6	Major	\$11,000
259 Manchester St., 1 st Floor, Manchester, NH	Paulay Ali	1/1/2007	Adult	Minor	\$2,580
304 Manchester St., 2 nd Floor, Manchester, NH	Shamsa Osman	1/28/2007	Adult	Minor	\$2,580
191 Walnut St./126 Harrison St., 1 st Floor Rear, Manchester, NH	Lauren Grevi	6/1/2007	Adult	Minor	\$2,580
					Total: \$18,740

Count III - Failure to include as an attachment, or within a contract to lease target housing, the Lead Warning Statement

Provision Violated: 40 C.F.R. § 745.113(b)(1) requires that each contract to lease target housing include as an attachment, or within the contract, the Lead Warning Statement.

Circumstance Level: Failure to include the Lead Warning Statement in the language of the lease contract, or in an attachment thereto, pursuant to 40 C.F.R. § 745.113(b)(1), results in a high probability of impairing a lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.113(b)(1) is a *Level 2* violation.

Extent of Harm: The Disclosure Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by

the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to include the Lead Warning Statement in or attached to lease agreements regarding the following lease transactions:

Address	Tenant(s)	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
248 Green St., Apt. 1, Manchester, NH	Mohemad Molhemad	9/2007	1 child under age 6	Major	\$10,320
191 Walnut St./126 Harrison St., 1 st Floor Rear, Manchester, NH	Lauren Grevi	6/1/2007	Adult	Minor	\$1,550
					Total: \$11,870

Count IV- Failure to include in the lease or as an attachment thereto a statement by the lessor disclosing the presence of known lead-based paint hazards, or lack of knowledge thereof.

Provision Violated: 40 C.F.R. § 745.113(b)(2) requires that each contract to lease target housing include, as an attachment or within the lease 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.

Circumstance Level: Failing to include the statement of knowledge of lead-based paint and/or lead-based paint hazards as an attachment, or within the contract to lease target housing, results in a medium probability of impairing the lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards and to weigh this information with regard to leasing the target housing in question. Because the intent of this provision is to put potential lessees on notice of specific information relating to the presence of lead in the housing, violation of this provision deprives lessees of their right to make decisions based upon risk. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.113(b)(2) is a *Level 3* violation.

Extent of Harm: The Disclosure Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to include in the following leases, or as an attachment thereto, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or lack of knowledge thereof:

Address	Tenant(s)	Lease Date	Age of Youngest Occupant	Extent of Harm	Gravity-Based Penalty
248 Green St., Apt. 1, Manchester, NH	Mohemad Molhemad	9/2007	1 child under age 6	Major	\$7,740
259 Manchester St., 1 st Floor, Manchester, NH	Paulay Ali	1/1/2007	Adult	Minor	\$770
304 Manchester St., 2 nd Floor, Manchester, NH	Shamsa Osman	1/28/2007	Adult	Minor	\$770
191 Walnut St./126 Harrison St., 1 st Floor Rear, Manchester, NH	Lauren Grevi	6/1/2007	Adult	Minor	\$770
					Total: \$10,050

The total proposed gravity-based penalty for the violations cited above is \$54,240. Pursuant to a memorandum from Thomas Skinner, dated September 21, 2004, the total gravity-based penalty for all counts in a particular matter should be rounded to the nearest unit of \$100.00. Therefore, the proposed gravity-based penalty for this matter is \$54,200.