

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>In the Matter of:</b>	:	
	:	
<b>Bessie D. Jones</b>	:	
<b>144 Lafayette Street</b>	:	<b>Docket No. TSCA-03-2006-0290</b>
<b>York, Pennsylvania 17403</b>	:	
	:	
<b>Respondent,</b>	:	
	:	
<b>412 South Pershing Avenue</b>	:	<b>ADMINISTRATIVE COMPLAINT</b>
<b>York, Pennsylvania</b>	:	<b>AND NOTICE OF OPPORTUNITY</b>
	:	<b>FOR A HEARING ISSUED</b>
<b>422 South Pershing Avenue</b>	:	<b>PURSUANT TO SECTION 16(a)</b>
<b>York, Pennsylvania</b>	:	<b>OF THE TOXIC SUBSTANCES</b>
	:	<b>CONTROL ACT, 15 U.S.C. § 2615(a)</b>
<b>129 Edgar Street</b>	:	
<b>York, Pennsylvania</b>	:	
	:	
<b>169 West Maple Street</b>	:	
<b>York, Pennsylvania</b>	:	
	:	
<b>Target Housing.</b>	:	

**I. INTRODUCTION**

This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (“*Consolidated Rules of Practice*”), a copy of which is enclosed with this Complaint. The Administrator has delegated this authority to the Regional Administrators, and this authority has been further delegated in U.S. EPA Region III to the Associate Division Director for Enforcement of the Waste and Chemicals Management Division (“Complainant”).

The Respondent in this action is Bessie D. Jones (“Respondent”). By issuing this Complaint, Complainant alleges violations by Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, the 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 at 40 C.F.R. Part 745, Subpart F (also known as the “Disclosure Rule”).

Failure to comply with RLBPHRA Section 1018, 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 TSCA Section 409, 15 U.S.C. § 2689. Pursuant to TSCA Section 16, 15 U.S.C. § 2615, violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment of civil and/or criminal penalties.

In support of its Complaint, Complainant alleges the following:

## **II. JURISDICTION**

1. EPA and the Office of Administrative Law Judges of the EPA 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 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.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2. Respondent, Bessie D. Jones, is an individual who currently resides, and at the time of the violations alleged herein resided, at 144 Lafayette Street, York, Pennsylvania.
3. Pursuant to RLBPHRA Section 1004(27), 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.”
4. Pursuant to 40 C.F.R. § 745.103, the term “seller” means, *inter alia*, an individual who transfers legal title to target housing, in whole or in part, for consideration.
5. Pursuant to 40 C.F.R. § 745.103, the term “lessor” means, *inter alia*, any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals.
6. Pursuant to 40 C.F.R. § 745.103, the term “purchaser” means, *inter alia*, an individual who enters into an agreement to purchase an interest in target housing.
7. Pursuant to 40 C.F.R. § 745.103, the term “lessee” means, *inter alia*, any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals.
8. Pursuant to 40 C.F.R. § 745.103, the phrase “contract for the purchase and sale of residential real property” means “any contract or agreement in which one party agrees to purchase an interest in 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 RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 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.”
10. 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/cm<sup>2</sup>] or 0.5 percent by weight.”
11. 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.”
12. Pursuant to RLBPHRA Section 1004(12), 42 U.S.C. § 4851b(12), TSCA Section 401(7), 15 U.S.C. § 2681(7), and 40 C.F.R. § 745.103, the term “inspection” means: 1) a surface-by-surface investigation to determine the presence of lead-based paint as provided in Section 302(c) of the Lead-Based Paint Poisoning and Prevention Act, 42 U.S.C. § 4822; and 2) the provision of a report explaining the results of the investigation.
13. Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. § 4851b(24), and TSCA Section 401(15), 15 U.S.C. § 2681(15), the term “residential real property” means “real property on which there is situated 1 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 1 or more persons.”
14. Pursuant to 40 C.F.R. § 745.103, the term “owner” is defined to mean any entity that has legal title to target housing, including but not limited to individuals.
15. The building located at 169 West Maple Street in York, Pennsylvania, is a single-family dwelling.
16. The single-family dwelling located at 169 West Maple Street in York, Pennsylvania, was constructed prior to 1978.
17. The building containing the single-family dwelling located at 169 West Maple Street Avenue in York, Pennsylvania, is not housing for the elderly or persons with disabilities or a 0-bedroom dwelling.
18. The single-family dwelling located at 169 West Maple Street in York, Pennsylvania (hereinafter referred to as the “Maple Street Target Housing”) is a “residential dwelling” and “target housing” within the meaning of RLBPHRA Sections 1004(23) and (27), 42 U.S.C. §§ 4851b(23) and (27), TSCA Sections 401(14) and (17), 15 U.S.C. §§ 2681(14) and (17), and 40 C.F.R. § 745.103.

19. At the time of the violations alleged herein, including, but not limited to, October of 2001, Respondent had legal title to the Maple Street Target Housing and therefore, was the “owner” of the Maple Street Target housing within the meaning of 40 C.F.R. § 745.103.
20. On or about October 1, 2001, Respondent agreed to transfer legal title to the Maple Street Target Housing, in whole or in part, to individuals (hereinafter referred to as the “Purchasers”) in return for consideration, and therefore, Respondent was a “seller” of such target housing within the meaning of 40 C.F.R. § 745.103.
21. On or about October 1, 2001, Respondent entered into a written agreement/contract (“Agreement of Sale”) with the Purchasers in which Respondent agreed to transfer legal title of the Maple Street Target Housing to the Purchasers in exchange for consideration.
22. The Purchasers are “purchasers” within the meaning of 40 C.F.R. § 745.103.
23. The Agreement of Sale entered into between Respondent and Purchasers on or about October 1, 2001, was an agreement/contract in which Purchasers agreed to purchase an interest in real property on which there is situated one or more residential dwellings (i.e., the Maple Street Target Housing) used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of the Purchasers and, therefore, the Agreement of Sale is a “contract for the purchase and sale of residential real property” within the meaning of 40 C.F.R. § 745.103.
24. The Agreement of Sale did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. § 745.107 and where no new information described in 40 C.F.R. § 745.107 had come into the possession of the lessor.
25. The building located at 412 South Pershing Avenue in York, Pennsylvania, consists of at least two single-family dwelling units.
26. The building containing the single-family dwelling units located at 412 South Pershing Avenue in York, Pennsylvania, was constructed prior to 1978.
27. The single-family dwelling units located at 412 South Pershing Avenue in York, Pennsylvania (hereinafter referred to as “412 South Pershing Avenue Target Housing”) are “residential dwelling[s]” and “target housing” within the meaning of RLBPHRA Sections 1004(23) and (27), 42 U.S.C. §§ 4851b(23) and (27), TSCA Sections 401(14) and (17), 15 U.S.C. §§ 2681(14) and (17), and 40 C.F.R. § 745.103.
28. At the time of the violations alleged herein, including, but not limited to, June and November of 2002, May of 2004, and May of 2005, Respondent had legal title to the 412

South Pershing Avenue Target Housing and was the “owner” of the 412 South Pershing Avenue Target Housing within the meaning of 40 C.F.R. § 745.103.

29. On or before June 18, 2002, Respondent offered the 412 South Pershing Avenue Target Housing for lease, rent or sublease to individuals (hereinafter referred to as “Lessees #1”) and, therefore, Respondent was a “lessor” of such target housing within the meaning of 40 C.F.R. § 745.103.
30. On or about June 18, 2002, Respondent entered into a written agreement/contract (“Lease #1”) with Lessees #1 in which Respondent agreed to lease, rent or sublease to Lessees #1 the 412 South Pershing Avenue Target Housing.
31. Lessees #1 are “lessees” within the meaning of 40 C.F.R. § 745.103.
32. Lease #1 did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. § 745.107 and where no new information described in 40 C.F.R. § 745.107 had come into the possession of the lessor.
33. On or before November 1, 2002, Respondent offered the 412 South Pershing Avenue Target Housing, for lease, rent or sublease to individuals (hereinafter referred to as “Lessees #2”) and, therefore, Respondent was a “lessor” of such target housing within the meaning of 40 C.F.R. § 745.103.
34. On or about November 1, 2002, Respondent entered into a written agreement/contract (“Lease #2”) with Lessees #2 in which Respondent agreed to lease, rent or sublease to Lessees #2 the 412 South Pershing Avenue Target Housing.
35. Lessees #2 are “lessees” within the meaning of 40 C.F.R. § 745.103.
36. Lease #2 did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. § 745.107 and where no new information described in 40 C.F.R. § 745.107 had come into the possession of the lessor.
37. On or before May 17, 2004, Respondent offered the 412 South Pershing Avenue Target Housing for lease, rent or sublease to individuals (hereinafter referred to as “Lessees #3”) and, therefore, Respondent was a “lessor” of such target housing within the meaning of 40 C.F.R. § 745.103.

38. On or about May 17, 2004, Respondent entered into a written agreement/contract (“Lease #3”) with Lessees #3 in which Respondent agreed to lease, rent or sublease to Lessees #3 the 412 South Pershing Avenue Target Housing.
39. Lessees #3 are “lessees” within the meaning of 40 C.F.R. § 745.103.
40. Lease #3 did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. § 745.107 and where no new information described in 40 C.F.R. § 745.107 had come into the possession of the lessor.
41. On or before May 5, 2005, Respondent offered the 412 South Pershing Avenue Target Housing for lease, rent or sublease to individuals (hereinafter referred to as “Lessees #4”) and, therefore, Respondent was a “lessor” of such target housing within the meaning of 40 C.F.R. § 745.103.
42. On or about May 5, 2005, Respondent entered into a written agreement/contract (“Lease #4”) with Lessees #4 in which Respondent agreed to lease, rent or sublease to Lessees #4 the 412 South Pershing Avenue Target Housing.
43. Lessees #4 are “lessees” within the meaning of 40 C.F.R. § 745.103.
44. Lease #4 did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. § 745.107 and where no new information described in 40 C.F.R. § 745.107 had come into the possession of the lessor.
45. The building located at 422 South Pershing Avenue in York, Pennsylvania, consists of one single-family dwelling.
46. The building containing the single-family dwelling located at 422 South Pershing Avenue in York, Pennsylvania, was constructed prior to 1978.
47. The building containing the single-family dwelling located at 422 South Pershing Avenue in York, Pennsylvania, is not housing for the elderly or persons with disabilities or a 0-bedroom dwelling.
48. The single-family dwelling located at 422 South Pershing Avenue in York, Pennsylvania (hereinafter referred to as “422 South Pershing Avenue Target Housing”), is a “residential dwelling” and “target housing” within the meaning of RLBPHRA Sections 1004(23) and

(27), 42 U.S.C. §§ 4851b(23) and (27), TSCA Sections 401(14) and (17), 15 U.S.C. §§ 2681(14) and (17), and 40 C.F.R. § 745.103.

49. At the time of the violations alleged herein, including, but not limited to, October of 2004, Respondent had legal title to the 422 South Pershing Avenue Target Housing and was the “owner” of the 422 South Pershing Avenue Target Housing within the meaning of 40 C.F.R. § 745.103.
50. On or before October 19, 2004, Respondent offered the 422 South Pershing Avenue Target Housing for lease, rent or sublease to individuals (hereinafter referred to as “Lessees #5”) and, therefore, Respondent was a “lessor” of such target housing within the meaning of 40 C.F.R. § 745.103.
51. On or about October 19, 2004, Respondent entered into a written agreement/contract (“Lease #5”) with Lessees #5 in which Respondent agreed to lease, rent or sublease to Lessees #5 the 422 South Pershing Avenue Target Housing.
52. Lessees #5 are “lessees” within the meaning of 40 C.F.R. § 745.103.
53. Lease #5 did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. § 745.107 and where no new information described in 40 C.F.R. § 745.107 had come into the possession of the lessor.
54. The building located at 129 Edgar Street in York, Pennsylvania, consists of one single-family dwelling.
55. The building containing the single-family dwelling located at 129 Edgar Street in York, Pennsylvania, was constructed prior to 1978.
56. The building containing the single-family dwelling located at 129 Edgar Street in York, Pennsylvania, is not housing for the elderly or persons with disabilities or a 0-bedroom dwelling.
57. The single-family dwelling located at 129 Edgar Street in York, Pennsylvania (hereinafter referred to as “129 Edgar Street Target Housing”), is a “residential dwelling” and “target housing” within the meaning of RLBPHRA Sections 1004(23) and (27), 42 U.S.C. §§ 4851b(23) and (27), TSCA Sections 401(14) and (17), 15 U.S.C. §§ 2681(14) and (17), and 40 C.F.R. § 745.103.
58. At the time of the violations alleged herein, including, but not limited to, July of 2002, Respondent had legal title to the 129 Edgar Street Target Housing and was the “owner” of the 129 Edgar Street Target Housing within the meaning of 40 C.F.R. § 745.103.

59. On or before July 7, 2002, Respondent offered the 129 Edgar Street Target Housing for lease, rent or sublease to individuals (hereinafter referred to as "Lessees #6") and, therefore, Respondent was a "lessor" of such target housing within the meaning of 40 C.F.R. § 745.103.
60. On or about July 7, 2002, Respondent entered into a written agreement/contract ("Lease #6") with Lessees #6 in which Respondent agreed to lease, rent or sublease to Lessees #6 the 129 Edgar Street Target Housing.
61. Lessees #6 are "lessees" within the meaning of 40 C.F.R. § 745.103.
62. Lease #6 did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. § 745.107 and where no new information described in 40 C.F.R. § 745.107 had come into the possession of the lessor.
63. At some time during 2005, Respondent offered the 129 Edgar Street Target Housing for lease, rent or sublease to individuals (hereinafter referred to as the "Lessees #7") and, therefore, Respondent was a "lessor" of such target housing within the meaning of 40 C.F.R. § 745.103.
64. At some time during 2005, Respondent entered into a written agreement/contract ("Lease #7") with Lessees #7 in which Respondent agreed to lease, rent or sublease to Lessees #7 the 129 Edgar Street Target Housing.
65. Lessees #7 are "lessees" within the meaning of 40 C.F.R. § 745.103.
66. Lease #7 did not constitute: a sale of target housing at foreclosure; a lease of target housing that had been found to be lead-based paint free by an inspector certified under the federal certification program or under a federally accredited State or tribal certification program; a short-term lease of 100 days or less, where no lease renewal or extension could occur; or a renewal of an existing lease in target housing in which the lessor has previously disclosed all information required under 40 C.F.R. 745.107 and where no new information described in 40 C.F.R. 745.107 had come into the possession of the lessor.
67. 40 C.F.R. § 745.118(e) provides, in pertinent part, that failure or refusal to comply with 40 C.F.R. §§ 745.107, .110, .113 and .115 constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and of TSCA Section 409, 15 U.S.C. § 2689.

### COUNT 1

68. The allegations contained in Paragraphs 1 through 67 of this Complaint are incorporated by reference herein as though fully set forth at length.

69. Pursuant to 40 C.F.R. § 745.113(a)(1), each contract to sell target housing shall include an attachment containing the “Lead Warning Statement” set forth in 40 C.F.R. § 113(a)(1).
70. Respondent did not include the “Lead Warning Statement” set forth in, and required by, 40 C.F.R. § 745.113(a)(1) as an attachment to the Agreement of Sale for the Maple Avenue Target Housing entered into with Purchasers.
71. Pursuant to 40 C.F.R. § 745.118(e), Respondent’s failure to include the “Lead Warning Statement” set forth in 40 C.F.R. § 113(a)(1) as an attachment to the Agreement of Sale for the Maple Avenue Target Housing entered into with Purchasers, as required by 40 C.F.R. § 745.113(a)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

### **COUNT II**

72. The allegations contained in Paragraphs 1 through 71 of this Complaint are incorporated by reference herein as though fully set forth at length.
73. Pursuant to 40 C.F.R. § 745.113(a)(2), each contract to sell target housing shall include an attachment containing a statement by the seller disclosing the presence of any known lead-based paint in the target housing or indicating a lack of knowledge of such presence.
74. Respondent did not include a statement disclosing the presence of any known lead-based paint in the Maple Avenue Target Housing or indicating a lack of knowledge of such presence as an attachment to the Agreement of Sale for the Maple Avenue Target Housing entered into with Purchasers, as required by 40 C.F.R. § 745.113(a)(2).
75. Pursuant to 40 C.F.R. § 745.118(e), Respondent’s failure to include a statement disclosing the presence of any known lead-based paint in the Maple Avenue Target Housing or indicating a lack of knowledge of such presence as an attachment to the Agreement of Sale for the Maple Avenue Target Housing entered into with Purchasers, as required by 40 C.F.R. § 745.113(a)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

### **COUNT III**

76. The allegations contained in Paragraphs 1 through 75 of this Complaint are incorporated by reference herein as though fully set forth at length.
77. Pursuant to 40 C.F.R. § 745.113(b), each contract to lease target housing shall include, as an attachment or within the contract, the “Lead Warning Statement” set forth in 40 C.F.R. § 745.113(b)(1), as follows:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the

presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

78. Respondent did not include the "Lead Warning Statement" set forth in, and required by, 40 C.F.R. § 745.113(b)(1) as an attachment or within Lease #1 for the 412 South Pershing Avenue Target Housing entered into with Lessees #1.
79. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the "Lead Warning Statement" set forth in 40 C.F.R. § 113(b)(1) as an attachment or within Lease #1 for the 412 South Pershing Avenue Target Housing entered into with Lessees #1, as required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### COUNT IV

80. The allegations contained in Paragraphs 1 through 79 of this Complaint are incorporated by reference herein as though fully set forth at length.
81. 40 C.F.R. § 745.113(b)(2) provides, in relevant part, that each contract to lease target housing shall include, as an attachment or within the contract, a statement by the lessor disclosing, *inter alia*, the presence of any known lead-based paint in the target housing or indicating a lack of knowledge of such presence.
82. Respondent did not include, as an attachment or within Lease #1, a statement disclosing the presence of any known lead-based paint in the 412 South Pershing Avenue Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(a)(2).
83. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include, as an attachment to or within Lease #1, a statement disclosing the presence of any known lead-based paint in the 412 South Pershing Avenue Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### COUNT V

84. The allegations contained in Paragraphs 1 through 83 of this Complaint are incorporated by reference herein as though fully set forth at length.
85. Respondent did not include the "Lead Warning Statement" set forth in, and required by, 40 C.F.R. § 745.113(b)(1) as an attachment or within Lease #2 for the 412 South Pershing Avenue Target Housing entered into with Lessees #2.
86. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the "Lead Warning Statement" set forth in 40 C.F.R. § 113(b)(1) as an attachment or within Lease #2 for the 412 South Pershing Avenue Target Housing entered into with Lessees#2, as required by

40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### **COUNT VI**

87. The allegations contained in Paragraphs 1 through 86 of this Complaint are incorporated by reference herein as though fully set forth at length.
88. Respondent did not include, as an attachment or within Lease #2 for the 412 South Pershing Avenue Target Housing entered into with Lessees #2, a statement disclosing the presence of any known lead-based paint in the 412 South Pershing Avenue Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2).
89. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include, as an attachment or within Lease #2 for the 412 South Pershing Avenue Target Housing entered into with Lessees #2, a statement disclosing the presence of any known lead-based paint in the target housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### **COUNT VII**

90. The allegations contained in Paragraphs 1 through 89 of this Complaint are incorporated by reference herein as though fully set forth at length.
91. Respondent did not include the "Lead Warning Statement" set forth in, and required by, 40 C.F.R. § 745.113(b)(1) as an attachment or within Lease #3 for the 412 South Pershing Avenue Target Housing entered into with Lessees #3.
92. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the "Lead Warning Statement" set forth in 40 C.F.R. § 113(b)(1) as an attachment or within Lease #3 for the 412 South Pershing Avenue Target Housing entered into with Lessees #3, as required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### **COUNT VIII**

93. The allegations contained in Paragraphs 1 through 92 of this Complaint are incorporated by reference herein as though fully set forth at length.
94. Respondent did not include, as an attachment or within Lease #3 for the 412 South Pershing Avenue Target Housing entered into with Lessees #3, a statement disclosing the presence of any known lead-based paint in the 412 South Pershing Avenue Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2).

95. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include, as an attachment or within Lease #3 for the 412 South Pershing Avenue Target Housing entered into with Lessees #3, a statement disclosing the presence of any known lead-based paint in the target housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### COUNT IX

96. The allegations contained in Paragraphs 1 through 95 of this Complaint are incorporated by reference herein as though fully set forth at length.
97. Respondent did not include the "Lead Warning Statement" set forth in, and required by, 40 C.F.R. § 745.113(b)(1) as an attachment or within Lease #4 for the 412 South Pershing Avenue Target Housing entered into with Lessees #4.
98. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the "Lead Warning Statement" set forth in 40 C.F.R. § 113(b)(1) as an attachment or within Lease #4 for the 412 South Pershing Avenue Target Housing entered into with Lessees #4, as required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### COUNT X

99. The allegations contained in Paragraphs 1 through 98 of this Complaint are incorporated by reference herein as though fully set forth at length.
100. Respondent did not include, as an attachment or within Lease #4 for the 412 South Pershing Avenue Target Housing entered into with Lessees #4, a statement disclosing the presence of any known lead-based paint in the 412 South Pershing Avenue Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2).
101. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include, as an attachment or within Lease #4 for the 412 South Pershing Avenue Target Housing entered into with Lessees #4, a statement disclosing the presence of any known lead-based paint in the target housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### COUNT XI

102. The allegations contained in Paragraphs 1 through 101 of this Complaint are incorporated by reference herein as though fully set forth at length.
103. Respondent did not include the "Lead Warning Statement" set forth in, and required by, 40 C.F.R. § 745.113(b)(1) as an attachment or within Lease #5 for the 422 South Pershing Avenue Target Housing entered into with Lessees #5.

104. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the "Lead Warning Statement" set forth in 40 C.F.R. § 113(b)(1) as an attachment or within Lease #5 for the 422 South Pershing Avenue Target Housing entered into with Lessees #5, as required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### **COUNT XII**

105. The allegations contained in Paragraphs 1 through 104 of this Complaint are incorporated by reference herein as though fully set forth at length.
106. Respondent did not include, as an attachment or within Lease #5 for the 422 South Pershing Avenue Target Housing entered into with Lessees #5, a statement disclosing the presence of any known lead-based paint in the 422 South Pershing Avenue Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2).
107. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include, as an attachment or within Lease #5 for the 422 South Pershing Avenue Target Housing entered into with Lessees #5, a statement disclosing the presence of any known lead-based paint in such target housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### **COUNT XIII**

108. The allegations contained in Paragraphs 1 through 107 of this Complaint are incorporated by reference herein as though fully set forth at length.
109. Respondent did not include the "Lead Warning Statement" set forth in, and required by, 40 C.F.R. § 745.113(b)(1) as an attachment or within Lease #6 for the 129 Edgar Street Target Housing entered into with Lessees #6.
110. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the "Lead Warning Statement" set forth in 40 C.F.R. § 113(b)(1) as an attachment or within Lease #6 for the 129 Edgar Street Target Housing entered into with Lessees #6, as required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### **COUNT XIV**

111. The allegations contained in Paragraphs 1 through 110 of this Complaint are incorporated by reference herein as though fully set forth at length.
112. Respondent did not include, as an attachment or within Lease #6 for the 129 Edgar Street Target Housing entered into with Lessees #6, a statement disclosing the presence of any

known lead-based paint in the 129 Edgar Street Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2).

113. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include, as an attachment to or within Lease #6 for the 129 Edgar Street Target Housing entered into with Lessees #6, a statement disclosing the presence of any known lead-based paint in such target housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### COUNT XV

114. The allegations contained in Paragraphs 1 through 113 of this Complaint are incorporated by reference herein as though fully set forth at length.
115. Respondent did not include the "Lead Warning Statement" set forth in, and required by, 40 C.F.R. § 745.113(b)(1), as an attachment or within Lease #7 for the 129 Edgar Street Target Housing entered into with Lessees #7.
116. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include the "Lead Warning Statement" set forth in 40 C.F.R. § 113(b)(1) as an attachment or within Lease #7 for the 129 Edgar Street Target Housing entered into with Lessees #7, as required by 40 C.F.R. § 745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### COUNT XVI

117. The allegations contained in Paragraphs 1 through 116 of this Complaint are incorporated by reference herein as though fully set forth at length.
118. Respondent did not include, as an attachment or within Lease #7 for the 129 Edgar Street Target Housing entered into with Lessees #7, a statement disclosing the presence of any known lead-based paint in the 129 Edgar Street Target Housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2).
119. Pursuant to 40 C.F.R. § 745.118(e), Respondent's failure to include, as an attachment to or within Lease #7 for the 129 Edgar Street Target Housing entered into with Lessees #7, a statement disclosing the presence of any known lead-based paint in the target housing or indicating a lack of knowledge of such presence, as required by 40 C.F.R. § 745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA § 409, 15 U.S.C. § 2689.

#### IV. 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, which increases the civil penalties that can be assessed for violations occurring on or after July 28, 1997, by 10 percent. This Rule also provides for a 17.23 percent penalty increase for all violations occurring after March 15, 2004, but the maximum penalties cannot exceed \$11,000 per violation at this time.

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 February 2000, 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.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty 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, facts and circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued.

The penalty to be proposed does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes the assessment of a civil penalty of up to \$11,000 against Respondent for each violation alleged in this Complaint.

#### Explanation as to Number and Severity of Violations

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant sets forth a brief explanation of the number and severity of violations alleged herein.

The *ERP* provides that the overall seriousness of the violation is to be assessed by considering the *circumstances* of the violation and the *extent of harm* that may result from such violation. “*Circumstances* reflect the probability of harm resulting from a particular type of violation.” In the context of Disclosure Rule violations:

the primary circumstance to be considered is the Purchaser’s and Lessee’s ability to properly assess and weigh the factors associated with human health risk when

purchasing or leasing target housing. The greater the deviation from the regulations (such as no disclosure), the greater the likelihood that the Purchaser and Lessee will be uninformed about the hazards associated with lead-based paint and, consequently, the greater the likelihood of a child being exposed to lead-based paint hazards.  
*ERP* at 11.

Violations of the Disclosure Rule requirements set forth at 40 C.F.R. § 745.113(a)(1) and (b)(1) are deemed to represent a “high” level of impairment to a purchaser’s or lessee’s ability to assess the information required to be disclosed therein and are characterized as *Circumstance Level 2* violations in the ERP. As a result, each violation alleged in Counts 1, 3, 5, 7, 9, 11, 13, and 15 (a total of eight violations) may be characterized as a Circumstance Level 2 violation for purposes of calculating an appropriate penalty.

Violations of the Disclosure Rule requirements set at 40 C.F.R. § 745.113(a)(2) and (b)(2) are deemed to represent a “medium” level of impairment to a purchaser’s or lessee’s ability to assess the information required to be disclosed therein and are characterized as *Circumstance Level 3* violations in the ERP. As a result, each violation alleged in Counts 2, 4, 6, 8, 10, 12, 14 and 16 (a total of eight violations) may be characterized as a Circumstance Level 3 violation for purposes of calculating an appropriate penalty.

According to the *ERP*, the measure of “extent” of harm for Disclosure Rule violations focuses on the Rule’s overall intent – to prevent childhood lead poisoning. The *ERP* characterizes specific violations of the Disclosure Rule requirements as “major,” “significant” or “minor” in extent, based on 1) the age of any children who live in target housing and 2) whether a pregnant woman lives in the target housing.

A “Major Extent” violation is defined by the *ERP* as having “[p]otential for ‘serious’ damage to human health or for major damage to the environment.” The failure to provide a required lead-based paint disclosure to purchasers or lessees with one or more children under the ages of six (6) or a pregnant women is considered a “*Major Extent*” violation under the ERP.

A “Significant Extent” violation is defined by the *ERP* as having “[p]otential for ‘significant’ amount of damage to human health or the environment.” The failure to provide a required lead-based paint disclosure to purchasers or lessees with one or more children between the ages of six and eighteen is considered a “*Significant Extent*” violation under the ERP.

A “Minor Extent” violation is defined by the *ERP* as having “[p]otential for a ‘lesser’ amount of damage to human health or to the environment.” The failure to provide a required lead-based paint disclosure to purchasers or lessees where the occupants are eighteen or older is considered a “Minor Extent” violation under the *ERP*.

At the present time, Complainant has incomplete information as to **all** of the target housing occupants at the times of each violation, that is, the ages of children and whether pregnant women occupied the target housing. Complainant does have information that some occupants of the target housing did include a pregnant woman and children under age six. Therefore, in accordance with the *ERP*, Complainant would propose the maximum civil penalty, or a “major” extent of harm, in such instances. As provided in the *ERP*, Respondent may

mitigate the proposed penalty by providing Complainant with evidence that pregnant women or children were not present in the respective target housing units at the times of the violations alleged herein. If Respondent does provide such additional factual information, Complainant will consider it in proposing a specific penalty amount in accordance with 40 C.F.R. § 22.19(a)(4).

Complainant also anticipates that it will apply a downward adjustment to the civil penalty to be proposed, under “other factors as justice may require,” to account for the fact that each of the leases at issue bore lead warning statement language, albeit not *the* Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1).

In addition, Complainant will consider, among other factors, Respondent’s ability to pay to adjust any civil penalty proposed by Complainant. It is Respondent’s responsibility to provide to Complainant financial information to support and establish any claim by Respondent of an inability to pay any penalty proposed by Complainant. To the extent that facts or circumstances, including, but not limited to, additional information concerning Respondent’s ability to pay any proposed penalty that were unknown to Complainant at the time that such penalty is proposed become known to Complainant thereafter, such facts and circumstances may be considered as a basis for adjusting the civil penalty proposed by Complainant.

#### **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondent has the right to request a hearing to contest any material fact, conclusion of law and/or the appropriateness of any penalty amount proposed to be assessed for the violations alleged in this Complaint. Any hearing requested and granted will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. § 554, and the *Consolidated Rules of Practice*, a copy of which is enclosed. 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 § 22.21(d).

To request a hearing, Respondent must file a written Answer to this Complaint (hereinafter, “Answer”). The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which 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 in the Answer will be considered as 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 in the Complaint against Respondent and a waiver of the right to a hearing. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order and the imposition of penalties without further proceedings.***

Respondent's Answer should be filed with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

In addition, a copy of the Answer should be served upon Ms. Janet E. Sharke, the attorney assigned to represent EPA in this matter, at the following address:

Janet E. Sharke (3RC30)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

## **VI. SETTLEMENT CONFERENCE**

EPA encourages settlement of proceedings at any time after issuance of a 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 Complainant to discuss the allegations of the Complaint and the amount of any proposed civil penalty. ***However, a request for a settlement conference does not relieve the Respondent of the 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 execution of such a Consent Agreement shall constitute a waiver of Respondent's rights to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

If Respondent wishes to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Ms. Sharke at (215) 814-2689 before the expiration of the thirty (30) day period following Respondent's receipt of this Complaint. If Respondent is represented by legal counsel, such counsel must contact Ms. Sharke on your behalf. Once again, however, such ***a request for a settlement conference does not relieve Respondent of the responsibility to file an Answer within thirty (30) days following the receipt of this Complaint.***

## **VII. QUICK RESOLUTION**

EPA has not demanded or proposed a specific penalty in this Complaint, but will do so at a later date in a prehearing exchange of information. In accordance with 40 C.F.R. § 22.18(a) of the *Consolidated Rules of Practice*, Respondent may resolve the Complainant's claims against

her in this proceeding, at any time thereafter, by paying in full, and as specified below, the specific penalty proposed in Complainant's prehearing information exchange and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. Respondent's full payment of such proposed penalty amount, in accordance with the provisions of this paragraph, shall be made by certified or cashier's check, or by EFT (electronic wire transfer), payable to the "United States Treasury", and mailed or transmitted to the applicable address shown below:

1. Via U.S. Postal Service Regular Mail:

U.S. EPA, Region III  
P.O. Box 371099M  
Pittsburgh, PA 15251-6515.

2. Via overnight deliveries to:

Mellon Client Service Center  
Attn: Shift Supervisor  
Lockbox 371099M; Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001.

3. Via EFT:

Mellon Bank  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235.

The Mellon Bank customer service contact for the above payment centers is Patricia McKaveney, at 412-234-5805.

To ensure proper crediting of any payment, each payment must reference the Respondent's name and address and the EPA Docket number (TSCA-03-2006-0290) of this Complaint. A notice of payment, including a copy of the check or EFT receipt, shall be sent simultaneously to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and to Janet E. Sharke, Sr. Assistant Regional Counsel (3RC30), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

If Respondent needs additional time to pay the penalty, it may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the prehearing information exchange containing Complainant's civil penalty proposal, stating that the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1) of the *Consolidated Rules of Practice*. The written statement need not contain any response to, or admission of, the allegations in this Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within sixty (60) days after receiving Complainant's above-referenced prehearing information exchange, Respondent shall pay the full amount of the proposed penalty. Failure to

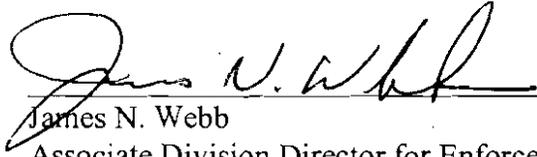
make such payment within sixty (60) days of receipt of such prehearing information exchange may subject Respondent to a default order pursuant to 40 C.F.R. § 22.17 of the *Consolidated Rules of Practice*.

Upon receipt of Respondent's payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the *Consolidated Rules of Practice* and this Quick Resolution procedure, the Regional Administrator or his designee, the Regional Judicial Officer, shall issue a Final Order to the Respondent, thereby resolving Respondent's potential civil liability for the violations alleged by Complainant in this proceeding. Such payment by Respondent shall constitute a waiver of the Respondent's right to contest the allegations in the Complaint and to appeal the Final Order.

### **VIII. 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.

September 25, 2006  
Date

  
James N. Webb

Associate Division Director for Enforcement  
Waste and Chemicals Management Division

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing, EPA Docket No. TSCA-03-2006-0290, has been filed with the Regional Hearing Clerk, EPA, Region III, and that copies of the Complaint and documents were sent via certified mail, return receipt requested, to:

Ms. Bessie D. Jones  
144 Lafayette Street  
York, PA 17403

Mr. Albert G. Barnes, Esq.  
268 East Market Street  
York, PA 17403

7/26/06  
Date

Janet E. Sharke  
Janet E. Sharke (3RC30)  
Counsel for Complainant  
U.S. Environmental Protection Agency, Region III  
(215) 814-2689