

PHIFER & WHITE, P.C.

ATTORNEYS AND COUNSELORS

JEFFREY G. COLLINS

L. B. KING BUILDING
1274 LIBRARY STREET
SUITE 500
DETROIT, MICHIGAN 48226

TELEPHONE: (313) 964-2360
FACSIMILE: (313) 964-6870
VOICEMAIL EXTENSION #103
EMAIL: JCOLLINS@PHIFERWHITE.COM
WEBSITE: [HTTP://WWW.PHIFERWHITE.COM](http://WWW.PHIFERWHITE.COM)

May 22, 2008

Regional Hearing Clerk (E-13J)
U.S. EPA – Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

**Re: In the matter of Aretha Marshall
Docket No. TSCA-05-2008-0008
Our File: 730.080001**

Dear Sir/Madam:

Enclosed for filing, on behalf of the Respondent, please find the following documents with reference to the above-captioned matter:

1. Motion to File Amended Answer and/or Motion to Extend Time to Answer Complaint;
2. Brief in Support of Motion;
3. Exhibit A;
4. Proof of Service.

Thank you for your courtesies in this regard.

Very truly yours,

PHIFER & WHITE, P.C.

Jeffrey G. Collins

Jeffrey G. Collins

JGC/daa
Enclosures

cc: Jeffrey A. Cahn, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Aretha Marshall)
Detroit, Michigan,)
)
Respondent.)

Docket No. TSCA-05-2008-0008

JEFFREY A. CAHN (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-6670

JEFFREY G. COLLINS (P37260)
PHIFER & WHITE, P.C.
Attorneys for Respondent
1274 Library Street, Suite 500
Detroit, Michigan 48226
(313) 964-2360

RECEIVED
REGIONAL HEARINGS CLERK
U.S. EPA REGION 5
2008 MAY 27 PM 3:54

**MOTION TO FILE AMENDED ANSWER AND/OR
MOTION TO EXTEND TIME TO ANSWER COMPLAINT**

NOW COMES Respondent, Aretha Marshall, by and through her attorneys, Phifer & White, P.C., by Jeffrey G. Collins, and states as follows for her Motion to File Amended Answer and/or Motion to Extend Time to Answer the Plaintiff's Complaint:

1. Complainant filed a Complaint, which consisted of 55 Counts and 100 paragraphs, with the United States Environmental Protection Agency Region 5 on April 7, 2008.
2. On May 7, 2008, Respondent answered the Complaint with a letter and requested an informal settlement conference. Respondent contends her May 7, 2008 letter is sufficient notice to the Complainant to bar the entry of any default order and any proposed civil penalty. (See Exhibit A).

3. Respondent received a telephone call from Associate Regional Counsel Jeffrey A. Cahn, who indicated that the May 7, 2008 letter was not an adequate answer to the Complaint.

4. On May 16, 2008, Respondent retained the undersigned to represent her in this matter.

5. On May 16, 2008, counsel for the respondent contacted Associate Regional Counsel Jeffrey A. Cahn and informed him of the retention and sought concurrence in the extension of time within which to file an Answer to the Complaint, but concurrence was denied.

6. Because counsel is still assembling information in connection with the Complaint, and due to the length of the Complaint, more time is required to formulate a meaningful answer to said Complaint. Counsel for the respondent is also in a two (2) week federal trial in the Northern District of Ohio beginning May 27, 2008.

7. The parties would not be prejudiced by an additional thirty (30) days in which to answer the Complaint.

WHEREFORE, Respondent, Aretha Marshall, respectfully requests this Court grant her an additional thirty (30) days from today's date to file a formal and/or amended Answer to the Complaint.

Respectfully submitted,

PHIFER & WHITE, P.C.

BY: 

JEFFREY G. COLLINS (P37260)
Attorneys for Respondent
1274 Library Street, Suite 500
Detroit, Michigan 48226
(313) 964-2360

DATED: May 22, 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Aretha Marshall)
Detroit, Michigan,)
)
Respondent.)
_____)

Docket No. TSCA-05-2008-0008

JEFFREY A. CAHN (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-6670

JEFFREY G. COLLINS (P37260)
PHIFER & WHITE, P.C.
Attorneys for Respondent
1274 Library Street, Suite 500
Detroit, Michigan 48226
(313) 964-2360

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION 5
2008 MAY 27 PM 3:54

**BRIEF IN SUPPORT OF MOTION TO FILE AMENDED ANSWER AND/OR
MOTION TO EXTEND TIME TO ANSWER COMPLAINT**

This motion is brought pursuant to the Administrative Laws of the State of Michigan.

WHEREFORE, Respondent, Aretha Marshall, respectfully requests this Court grant her an additional thirty (30) days from today's date to file a formal and/or amended Answer to the Complaint.

Respectfully submitted,

PHIFER & WHITE, P.C.

BY: _____

JEFFREY G. COLLINS (P37260)
Attorneys for Respondent
1274 Library Street, Suite 500
Detroit, Michigan 48226
(313) 964-2360

DATED: May 22, 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Aretha Marshall)
Detroit, Michigan,)
)
Respondent.)
_____)

Docket No. TSCA-05-2008-0008

JEFFREY A. CAHN (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-6670

JEFFREY G. COLLINS (P37260)
PHIFER & WHITE, P.C.
Attorneys for Respondent
1274 Library Street, Suite 500
Detroit, Michigan 48226
(313) 964-2360

RECEIVED
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
MAY 27 11 31 AM '08

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

DONALYN ATKINSON, being first duly sworn, deposes and says that on the 22nd day of May, 2008, she forward, via first class regular mail, a copy of *DEFENDANT'S MOTION TO FILE AN AMENDED ANSWER AND/OR MOTION TO EXTEND TIME TO ANSWER COMPLAINT; BRIEF IN SUPPORT OF MOTION TO EXTEND TIME TO ANSWER COMPLAINT; and PROOF OF SERVICE*, upon the following individual:

Mr. Jeffrey A. Cahn
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

by placing same in an envelope properly and plainly addressed to him at his business address as shown above, and by depositing said envelope in a United States mail receptacle, with sufficient postage for regular first class mail fully prepaid thereon, in the City of Detroit, County of Wayne, and State of Michigan.


DONALYN ATKINSON

Exhibit A

Epa 5/7/08

ARETHA MARSHALL

711 West Boston Boulevard

Detroit, Michigan 48202

American Oilfield Services

(313) 868-8771

FAX-(313) 865-6378

May 7, 2008

CERTIFIED MAIL

RECEIPT NO. _____

Jeffrey A. Cahn (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

RE: In the Matter of Aretha Marshall
Docket No. TSCA-05-2008-0008

Dear Mr. Cahn:

This letter is a reply to correspondence received by me on April 11, 2008, by certified mail, from Margaret M. Guerriero, Director, Land and Chemicals Division, United States Environmental Protection Agency, wherein the response and request for an informal settlement conference were to be directed to you. I request an informal settlement conference.

I am a native of Detroit, Michigan. I have and continue to be involved in community service locally and nationally. I am an advocate for the city of Detroit and its residents. , In an apartment building owned by my family for more than fifty years I strive to provide low-income residents with a comfortable, safe and secure environment.

The bailiffs and the City of Detroit Department of Building and Safety Engineering who conduct an annual building inspection will tell you that my property is among the nicest in the city. In spite of every effort we make to upgrade and make our rental property very nice, safe and clean, some tenants get great pleasure in destroying anything nice. But,

still we persevere making sure that every unit is thoroughly cleaned, repaired, and painted before another tenant moves it. There is no chipped paint in any unit when it is rented to a new tenant even though many of the tenants are there less than 100 days.

Every residence in the city of Detroit that was built before 1978 has the possibility of lead. It is both physically impossible and financially impossible to rid a property of all lead paint, let alone sift all the dirt in the yard to remove all vestiges of lead. It would be cheaper for me to close down the apartment building. I chose not to do that. Instead at a great financial loss to me particularly, lead abatement throughout the building, I strive to maintain a respectable, clean, safe building for low-income, disabled and senior-aged tenants who want to be in this vicinity. There are too many boarded residential dwellings in this city. My building is not one of them.

On August 18, 2005 a member of HUD's Compliance Team contacted me to schedule an on-site review for August 25, 2005 for a voluntary compliance review of The Lead Disclosure Rule. I believed this meeting was informational to apprise owners of residential property of the Disclosure Rule and to assist them in providing what needed to be done and ongoing to fulfill the requirements of the Disclosure Rule. My full cooperation was given then and in subsequent correspondence from and to Walter D. Wynn, II, Director, Compliance Assistance and Enforcement Division, HUD. I immediately notified the existing tenants, the building is half occupied at best in any given month. In case they had no recollection of the form, each tenant was given a copy of the pamphlet, "Protect Your Family From Lead In Your Home" regardless that it had been received previously. I directed the resident manager, Mrs. Reynolds, to maintain accurate and complete records pertaining to all tenants and I began reviewing because of the health problems and senior age of the resident manager. She was well into her eighties and served at the resident manager for more than thirty years. Until I could make arrangements for a transition to a new resident manager, I employed a man for maintenance and security. Mrs. Reynolds' successor became the resident manager in January, 2006.

On September 5, 2007, more than two years after the HUD Compliance Team visit and my subsequent voluntary correspondence to the agency, I began to receive a series of letters from Pamela Grace, Enforcement Officer, Pesticides and Toxics Compliance Section, Land and Chemicals Division and others, copied to Jeff Cahn, Office of Regional Counsel, citing "Intent to File a Civil Administrative Action against Aretha Marshall, Detroit, Michigan."

Not one tenant who was in the building during the time referenced in Ms. Gueeriero's complaint is still there. Mr. Dodson Reynolds, resident manager for more than thirty years, died in March, 2005. Subsequently, his wife, Mrs. Bertha Reynolds, who handled leases moved out-of-state with no forwarding address. Joseph C. Marshall, attorney, handled legal matters and in 2005 was diagnosed with a grave and debilitating medical problem. I have diligently tried to locate more copies of form, "Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards" that would have

been handled by Mrs. Reynolds and I have been unable to locate information additional to that submitted in August, 2005. Once a tenant vacates the premises, the lease and other records pertaining to that particular tenant are not maintained after the three year time period as designated in the Disclosure Rule. Tenants do not leave forwarding addresses or telephone numbers. Leases now require tenants to provide social security identification, photo ID, proof of employment and/or means of rent payment. Also incorporated in the lease is the aforementioned disclosure form. It is no longer separate from the lease.

Complete building lead abatement and wall restoration have been and are ongoing in the building. For many years this building has been half occupied or less, tenants are highly transient. Because of the high crime and targeted area for drug trafficking, I have employed a security person for building surveillance

Following please find remarks in regard to the Term of Lease given on page 4 of Ms. Guerriero's letter.

Term of Lease	Apt. No.	Remarks
8/2004 – 8/2005	2	Not a lessee, maintenance person
8/2004 - 8/2004	3	Lessee was senior, over 65 years of age
4/2005 – 9/2005	3	Lessee evicted (court order) 6/2005
9/2005-Present	3	Disclosure of Information on Lead-Based Paint and pamphlet, Protect Your Family From Lead In Your Home on file and Given to lessee. Lessee vacated premises 11/2006
4/2005-present	4	4/2005 vacant; 5-11/2005 lessee disabled/senior 12/2005 -2/2006 vacant 3/2006-7/2006
10/2003-8/2005	22	10/2003-5/2004;6/2004-2/2005; 4/2005-6/2005; 6/2005 vacant
2/2004-7/2004	23	lessee senior citizen (over 65 years old)
2/2004-7/2004	31	lessee senior citizen (over 65 years old)
10/2004-present	31	Disclosure of Information on Lead-Based Paint and pamphlet, Protect Your Home on File and given to lessee. Lessee vacated premises 6/2007. Vacant.
10/2003-2/2004	33	Lessee senior citizen (over 65 years old) moved 1/2004)

7/2003-4/2005

34

Lessee senior citizen (over 65 years)

IN SUMMARY:

I believe that I have met all of the regulations for lead-based paint disclosure promulgated by the Department of Housing and Urban Development and the Environmental Protection Agency:

Lessees have been provided with the publication, "Protect Your Family From Lead in Your Home."

Lessees have been provided with the form, "Disclosure of Information on Lead-Based Paint and/or Lead Based Paint Hazards."

Routine inspections are made by resident manager/agent for all interior surfaces and fixtures.

At the change of tenants, the apartments are thoroughly cleaned with a high-phosphate soap, vacuum cleaned and repainted.

Yours truly,

Aretha J. Marshall

Cc: Margaret M. Guerriero, Director, Land & Chemicals Division, EPA