



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

AUG 5 2008

Ref: 8ENF-L

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7005-0390-0000-4848-3814

Richard Rosenberg
The Washington Apartments
1375 Washington Street #A
Denver, Colorado 80203

Re: Complaint and Notice of Opportunity for Hearing for Lead-Based Paint
Disclosure Rule Violations

Dear Mr. Rosenberg:

Enclosed is a complaint and notice of opportunity for hearing for violations of the Lead-Based Paint Disclosure Rule. The complaint proposes a penalty of \$3,230.

The U.S. Environmental Protection Agency (EPA), Region 8 conducted an investigation of the Mt. Vernon Manor Apartment Complex located at 1375 Washington Street, Denver, Colorado. The investigation was conducted pursuant to the authority of the Toxic Substances Control Act (TSCA) to determine the compliance status of The Washington Apartments with the requirements of Section 409 of TSCA, 15 U.S.C. section 2689, and 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule).

The Disclosure Rule requires that before a lessee is obligated under any contract to lease target housing, the lessor and their agents are required to disclose to the purchaser or lessee certain information regarding the possible or actual presence of lead-based paint and /or lead-based paint hazards in the target housing, including providing the purchaser or lessee with an EPA-approved lead hazards information pamphlet. You have stipulated that prior to February 29, 2008, you did not provide lessees with lead based paint disclosures or with the "Protect Your Family Form Lead in Your Home." A copy of that signed stipulation is available for your review.

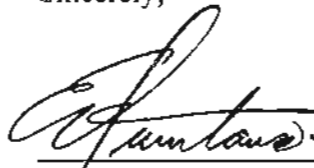
For your reference, enclosed, please find the Section 1018 Disclosure Rule Enforcement Response Policy. The Enforcement Response Policy sets forth EPA's policy in addressing

violations of the Disclosure Rule. Also find enclosed a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, which details the administrative procedure that will be followed throughout this process.

Please note that under the Rules of Practice, you may just send in a check for that amount to settle the proceeding, without the need for a settlement agreement. 40 CFR section 22.18.

If you have any questions please contact me. I can be reached at 303-312-6924, in writing at the address on the letterhead above, or by e-mail at quintana.eduardo@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Quintana', written over a horizontal line.

Eduardo Quintana, Senior Enforcement Attorney
Legal Enforcement Program

Enclosures: Penalty Complaint and Notice of Opportunity for Hearing
TSCA § 1018 Disclosure Rule Enforcement Response Policy
40 CFR Part 22: Consolidated Rules of Practice
Information Fact Sheet: U.S. EPA Small Business Resources

CERTIFICATION OF SERVICE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

I hereby certify that on this 6th day of August, 2008, a copy of the foregoing Penalty Complaint and Notice of Opportunity for Hearing, with enclosures was served by certified mail, return receipt requested to:

Richard Rosenberg
The Washington Apartments
1375 Washington Street #A
Denver, Colorado 80203

The original and one copy were hand-delivered to:

Tina Artemis
Region 8 Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

Date: August 6, 2008

Signature: Judith M. McTernan

Name and Title: JUDITH M. McTernan, Secretary

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 AUG -6 PM 1: 21

In the Matter of:)
)
Richard Rosenberg,) **PENALTY COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
)
Respondent.) **DOCKET NO.: TSCA-08-2008-0011**

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act ("Residential Lead Hazard Act") and the Toxic Substances Control Act ("TSCA"). 42 U.S.C. § 4851 et seq., and 15 U.S.C. § 2601 et seq. EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the Code of Federal Regulations and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA. The rules for this proceeding are 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 ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has failed to comply with federal regulations regarding the disclosure of lead-based paint hazards, found at 40 C.F.R. part 745, subpart F and, therefore, is in violation of the Residential Lead Hazard Act and TSCA. As a result, EPA proposes the assessment of a civil penalty, as more fully explained below. 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to contest (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty, or both.

5. To disagree with the Complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street, Denver, CO 80202-1129) not more than 30 days after receiving this Complaint and provide a copy to the enforcement attorney listed below. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE**

RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process, including how extensions of time to pay can be obtained.

SETTLEMENT NEGOTIATIONS

7. EPA encourages settlement discussions through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana, Senior Enforcement Attorney, at 303-312-6924 or 1-800-227-8917; extension 312-6924 or at the address below. **Please note that contacting the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for either paying the penalty or filing an answer and requesting a hearing.**

ALLEGATIONS

8. Respondent is Richard Rosenberg, ("Respondent").

9. EPA regulations require, among other things, that an owner of housing constructed before 1978 shall, prior to obligating a lessee under a contract to lease or rent the housing, provide or include in or attach to the leasing contract, (1) an EPA-approved lead hazard information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence), (4) a list of any records or reports available to the owner related to lead-based paint or hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she received the above information, and (6) signatures (dated) by both parties certifying the accuracy of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).

10. Richard Rosenberg and Michael Rosenberg are, and at all times relevant to this Complaint have been, the owners, as that term is defined in 40 C.F.R. § 745.103, of the property located at 1375 Washington Street, Denver, Colorado.

11. The property located at 1375 Washington Street is "residential real property" within the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(24), that was constructed before 1978.

12. The property located at 1375 Washington Street consists of approximately 30 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.

13. For three years prior to February 29, 2008, Respondent did not provide an EPA-approved lead hazard information pamphlet prior to entering into lease contracts and did not provide a lead warning disclosure statement within its lease contracts.

14. As part of entering into lease agreements, Respondent has failed to comply with the following requirements:

- a. Respondent failed to provide an EPA-approved lead hazard information pamphlet prior to entering into lease contracts in violation of 40 C.F.R. § 745.107(a)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- b. Respondent failed to include a lead warning statement within the lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- c. Respondent failed to include a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence), within the lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- d. Respondent failed to include a list of any records or reports available to the owner related to lead-based paint or hazards (or a statement that no such records exist) within lease contracts before the renters/lessees are obligated or enter into a lease contract in violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- e. Respondent failed to include a statement by the renters/lessees that the renters/lessees received the information described above in violation 40 C.F.R. § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.
- f. Respondent failed to include the signature of the lessor and lessee certifying to the accuracy of the their statements, to the best of their knowledge along with the dates of signature, in violation 40 C.F.R. § 745.113(b)(6), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

PROPOSED CIVIL PENALTY

15. The Residential Lead Hazard Act and TSCA, as amended by subsequent penalty adjustment law, authorize the assessment of a civil penalty of up to \$11,000 for each violation of the EPA regulations. In determining the amount of any civil penalty assessed, EPA is required 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 factors as justice may require. **EPA proposes that a penalty of Three Thousand Two Hundred and Thirty Dollars (\$3,230)** be assessed against Respondent for the violations alleged above.

16. EPA calculates penalties through the application of a national enforcement response policy that provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards.

17. The penalty was calculated using the Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act – Disclosure Rule Enforcement Response Penalty Policy (“ERP”), dated December 2007, a copy of which is enclosed.

Nature, Circumstances, Extent and Gravity of Violations

The nature of the violations is hazard assessment, as discussed on page 9 of the ERP. The circumstance level of the violations ranged from Level 1 to Level 6, based on the circumstance level matrix in Appendix B of the ERP. The extent level of the violations was minor, based on the extent level matrix on page B-4 of the ERP. Using the gravity-based penalty matrix on page B-4 of the ERP, which combines the circumstance and extent level for each Count, the gravity-based penalty amount is \$3,230.

Statutory Factors

Ability to pay/ability to continue in business: EPA does not have any information on the Respondent’s ability to pay. No adjustment has been made using this factor.

History of prior violations: This factor only adjusts the penalty upward. No history of prior violations found, so no adjustment has been made using this factor

Degree of culpability: The Residential Lead Hazard Act has been in effect since 1996. The Respondent should have had sufficient knowledge to recognize the hazard created by his

conduct, and/or significant control over the situation to avoid committing the violation. No adjustments made at this time regarding this factor.

Other factors as justice may require:

No adjustments made at this time regarding these factors.

The total adjusted penalty is \$3,230.

18. The ALJ is not bound by EPA's penalty policy nor the penalty proposed in the Complaint and may assess a penalty above the proposed amount, up to the maximum amount authorized by the statute.

**In the Matter of: Richard Rosenberg
Docket No.:**

To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Senior Enforcement Attorney, at the number or address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant

Date: 7/30/08

By: Cynthia J. Reynolds, Acting
Director
Technical Enforcement Program

Date: 7/31/08

By: David J. Janik
David J. Janik, Acting Director
Matthew Cohn, Acting Supervisory Attorney
Legal Enforcement Program

Date: 7/24/2008

Eduardo Quintana
Eduardo Quintana,
Senior Enforcement Attorney
Legal Enforcement Program
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