

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of

**PROVISION REALTY AND
PROPERTY MGMT LLC
JOPLIN, MO**

Respondent

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Docket No. TSCA-07-2007-0023

COMPLAINANT'S PREHEARING INFORMATION EXCHANGE

Pursuant to the Order dated August 6, 2007, and in accordance with Rule 22.19 of 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), Complainant files its prehearing exchange.

The numbered information requests in the August 6, 2007 Order are reproduced below, and the responsive information provided by the Complainant follows each request. Appendix I, attached to this pleading, consists of an index of, and copies of, Complainant's exhibits to be proffered at hearing. Appendix II, attached to this pleading, consists of the Narrative Statement referenced in 2(F) below.

1. Contents of Prehearing information exchange:

(A) Prospective witnesses and brief summaries of their anticipated testimonies:

- John Leftwich. John Leftwich was a grantee with the National Older Workers Career Center and was an authorized EPA representative at the time of March 1,

2006 inspection at the Provision Realty and Property Management, LLC facility in Joplin, Missouri. John Leftwich's duties included conducting compliance inspections for the Radiation, Asbestos, Lead and Indoor Programs Branch of the Air, RCRA and Toxics Division, EPA Region VII (the Division and Branch have since reorganized, and the Lead Paint program is now housed in the Toxics and Pesticides Branch of the Water, Wetlands and Pesticides Division). His business address is: 901 N. 5th Street, Kansas City, KS 66101. Mr. Leftwich was the Compliance Inspector for the March 1, 2006 inspection at the Provision Realty and Property Management, LLC facility in Joplin, Missouri. Mr. Leftwich will testify as to the leasing and Lead-Based Paint Disclosure records and information obtained during the March 1, 2006 inspection of Respondent's facilities.

- Stephven Richard. Stephven Richard is a Compliance Officer in the Toxics and Pesticides Branch of the Water, Wetlands and Pesticides Division, EPA Region VII. His business address is: 901 N. 5th Street, Kansas City, Kansas 66101. Mr. Richard's duties include case review of evidence regarding possible violations of Section 409 of TSCA and Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act (the Act) and calculation of penalties for civil administrative and civil judicial cases. Mr. Richard will testify as to her review of the evidence in this matter and the factual basis for EPA's determination that Respondent was in violation of Section 409 of TSCA and Section 1018 of the Act. Mr. Richard will testify regarding the determination of the penalty for the violations alleged in the Complaint, and the application of the February 2000 Enforcement Response Policy for Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction

Act to the facts of this case. Mr. Richard will testify regarding the calculation of the proposed penalties in the Complaint as set forth in his Penalty Calculation (Complainant's Exhibit 5).

- Expert witnesses. Complainant does not anticipate calling expert witnesses.

(B) Copies of all documents and exhibits intended to be introduced into evidence are numbered and attached hereto as Appendix I: Complainant's Exhibits as follows:

- Complainant's Exhibit 1. TSCA Title IV – Lead Exposure Reduction Inspection Report, dated March 1, 2006, and attachments thereto.
- Complainant's Exhibit 2. Apartment Lease for 627 Byers #1 in Joplin, Missouri, dated January 23, 2006, (includes page 1 and page 6 of 6 pages).
- Complainant's Exhibit 3. Signed statement by Matt Shurtleff, Broker/Manager, that the child in 627 Byers #1 is under 6 years old.
- Complainant's Exhibit 4. Enforcement Response Policy for Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act, dated February 2000.
- Complainant's Exhibit 5. Penalty Calculation Worksheet for Provision Real Estate.
- Complainant's Exhibit 6. Fax from Jasper County, MO, Assessor's office confirming the property at 627 Byers was constructed in 1920.

(C) Appropriate place of hearing and estimate of time needed to present direct case.

EPA requests that the hearing take place in Kansas City, Kansas, where the EPA Region VII office is located. EPA expects to call two witnesses and estimates that its direct case will not exceed 2 hours of testimony.

2. Additional submissions requested:

(A) A copy of any and all documents supporting the truth of the allegations in

paragraph 12 of the Complaint that the housing unit referenced therein is “target housing” as defined in the relevant statutes and regulations.

- Please refer to Complainant’s Exhibits 1, 2, and 6.

(B) A copy of any and all documents demonstrating the truth of the allegations in paragraphs 9 and 14 of the Complaint regarding the “contract to lease” of the property in question, including any such lease, rental, or sublease contract or agreement.

- Please refer to Complainant’s Exhibits 1, 2, and 6.

(C) A copy of any and all documents demonstrating the truth of the allegation in paragraph 10 of the Complaint that Provision was at all relevant times the “agent” for the lease of the property in question as defined in the relevant statutes and regulations.

- Please refer to Complainant’s Exhibits 1 and 2.

(D) A copy of the reports, if any, and all documents, notes, photographs and/or other records related thereto, including copies of the records and information collected from Respondent, of the evaluation referenced in paragraphs 8, 9, 13, and 14 of the Complaint. Please refer to Complainant’s Exhibit 1.

(E) A copy of any and all documents supporting the truth of the allegations in paragraphs 11, 13, and 14 of the Complaint.

- Please refer to Complainant’s Exhibits 1, 2, and 3.

(F) A detailed narrative statement that fully elaborates the exact factual and legal basis, and copies of all documents in support thereof, for the allegations made in the Complaint to which Respondents have not admitted the accuracy.

- Please refer to attached Narrative Statement.

(G) A copy of any penalty policy or guidelines relied upon by Complainant.

- Please refer to Complainant's Exhibit 4.

(H) A copy of all other documents used in consideration of a proposed penalty in this case, and, if and when a specific penalty amount is proposed, a separate Penalty Calculation Worksheet detailing exactly how the proposed penalty was calculated; and

- Please refer to Complainant's Exhibit 5.

(I) A statement regarding whether the Paper Work Reduction Act of 1980 ("PRA"), 44 U.S.C. § 3501 *et seq.*, applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein, and whether the provisions of Section 3512 of the PRA are applicable in this case.

- The Prehearing Order dated August 6, 2007 requests Complainant's position regarding the applicability of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, to this proceeding, including whether there is a current Office of Management and Budget control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.
- Section 3512 of the PRA states that no person shall be subject to a penalty for failing to comply with a collection of information if either the information collected does not display a valid OMB control number or if the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond unless it displays a valid OMB control number. Complainant believes that Section 3512 of the PRA is inapplicable to this proceeding with respect to Count 1, because a valid OMB control number is assigned to information collected under 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).

- In any event, for Count 1 (Failure to Conduct Lead-Based Paint disclosure activities – a violation of 40 C.F.R. § 745.107(a)), Complainant asserts that the PRA is not applicable to this Count because it does not involve collection of information.

RESERVATIONS

Complainant reserves the right to call all witnesses named by Respondent.

Complainant further reserves the right to submit the names of additional witnesses and to submit additional exhibits prior to the hearing of this matter, upon timely notice to the Presiding Officer and to the Respondent.

Respectfully Submitted,



Chris R. Dudding
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2007, I filed the original and one copy of Complainant's Prehearing Exchange, including copies of Complainant's Exhibits, with the Regional Hearing Clerk, EPA, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, and mailed a copy via U.S. Mail to the following:

Hon. Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

and

John North
216 E. 12th Street
Picher, OK 74360

and

Heather North
c/o
Complete Me Salon
1427 Missouri Ave
Joplin, MO 64801


