



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Docket No. TSCA-SP-2008-077

AUG 13 2008

John C. Jones
318 Warren Street
Roxbury, MA 02119

RE: SUBPOENA under Section 1018 of Title X (the Real Estate Notification and Disclosure Rule) and Section 406(b) of TSCA (the Pre-Renovation Rule)

Dear Mr. Jones:

On March 25, 2008, EPA conducted an inspection to determine compliance with laws and regulations requiring disclosure of Lead-based paint information upon the sale, lease, or Renovation of residential properties. The laws in question are Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852, and Section 406(b) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2686(b). The regulations implementing these laws are found at 40 C.F.R. Part 745, Subpart F ("Disclosure Rule") and 40 C.F.R. Part 745, Subpart E ("Pre-Renovation Rule"). A violation of the Disclosure Rule is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, which can result in civil penalties under Section 16 of TSCA of up to \$11,000 per violation. Likewise, a violation of the Pre-Renovation Rule is a prohibited act under Section 409 of TSCA, which can result in civil penalties of up to \$32,500 per violation.

EPA is issuing this subpoena to You because You have not responded to EPA's repeated requests for information. The March 2008 inspection took place at McDonald's and You did not have copies of most documents with You. EPA requested that You send copies of 7 leases from the last 2 years and copies of any Letter of Compliance, lead-based paint inspection reports, risk assessment reports or other documents pertaining to lead. EPA also suggested that You fill out a disclosure form for all your tenants. All documents were due to EPA by April 23rd. Since then, EPA inspectors have called You three times about these documents, and to date, nothing has been sent to EPA.

This subpoena is issued to You under the authority of Section 11(c) of TSCA, 15 U.S.C. § 2610(c). In carrying out its duties under TSCA, EPA may require by subpoena the attendance and testimony of witnesses, the production of reports, papers and documents, answers to questions, and other information the EPA deems necessary. **Your failure or refusal to fully and truthfully submit the information required by this subpoena may subject You to**

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

further action to enforce this subpoena in federal court. In addition, the failure or refusal to submit the information required in this subpoena may subject You to civil and/or criminal penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. The issuance of this document does not preclude the issuance of further subpoenas relating to this matter to You or other parties.

For your convenience, we are also enclosing a package of information to assist in your compliance with these rules.

I. DEFINITIONS

The following terms shall be defined as specified below. **Please read these definitions carefully to properly comply with the terms of this subpoena.** Unless otherwise defined below, the terms used in this subpoena have the meaning given in 15 U.S.C. § 2686, and the regulations promulgated thereunder at 40 C.F.R. Part 745, Subpart E; 42 U.S.C. § 4852d, and its implementing regulations at 40 C.F.R. Part 745, Subpart F; and 24 C.F.R. Part 35, Subpart A.

“Agent” means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing Target Housing. This term does not apply to the purchaser but may apply to a purchaser’s agent unless the Agent receives all compensation from the purchaser, as specified in 40 C.F.R. § 745.103.

“Disclosure Form” means certification and acknowledgment regarding the disclosure of information pertaining to lead-based paint and/or lead-based paint hazards as required by 40 C.F.R. § 745.113.

“Document” means the original or an identical and readable copy thereof, and all non-identical copies (whether different from the original by reason of notation made on such copies or otherwise), of any writings or records of any type or description, however created, produced or reproduced.

“Due Diligence” means, in this context, the collection and analysis of data that a reasonable person would take before buying a property to ascertain whether the property has any environmental conditions that could affect the transaction.

“Emergency Renovation Operations” means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

“Evaluation” means a Risk Assessment and/or Inspection.

"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.

"Lead-based paint" means paint or other surface coating which contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

"Lease" means a written or oral rental agreement for any period of time.

"Lessee" means any entity that enters into an agreement to lease, rent or sublease Target Housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes and non-profit organizations.

"Lessor" means any entity that offers Target Housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and non-profit organizations.

"New England" means the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

"Occupant" means the lessee and any other person who resides in the Target Housing.

"Purchaser" means an entity that enters into an agreement to purchase an interest in Target Housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and non-profit organizations.

"Renovation" means the repair or modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless the activity is performed as part of a lead-based paint abatement action, as defined by 40 C.F.R. § 745.223. The term Renovation includes, but is not limited to, the removal or modification of painted surfaces or painted components, such as modification of painted doors and surface preparation activity (e.g., sanding, scraping, or other such activities that may generate paint dust); the removal of large structures (e.g., walls, ceiling, large surface replastering, major replumbing); and window replacement.

"Risk Assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: information gathering regarding the age and history of the housing and occupancy by children; visual inspection; limited wipe sampling or other environmental sampling techniques; other activity as may be appropriate; and provision of a report explaining the results of the investigation.

"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 six (6) years of age resides or is expected to reside in such housing), and except any zero (0) bedroom dwelling. For the purpose of the subpoena, "housing constructed before 1978" means housing for which a construction

permit was obtained (or if no permit was obtained, housing in which construction was started) before January 1, 1978.

“Work Order” means any oral agreement, written document, or electronic communication used by property management, building management, or owners to request any work to be completed by employees or contractors including maintenance services, emergency repairs, quick work projects, and standing work for compensation by employer.

“You” and “Your” means (a) John C. Jones or Jones Realty (b) any entity or venture in which John C. Jones or Jones Realty maintains an interest; and (c) agents or representatives John C. Jones or Jones Realty.

II. INFORMATION TO BE SUBMITTED TO THE EPA

Please provide the information requested below within thirty days (30) of receipt of this subpoena. Your response must be accompanied by a signed and notarized copy of the attached affidavit. Where information necessary for a complete response is neither in Your possession nor reasonably available to You, indicate this fact in Your response and (1) explain the reasonable efforts You made to obtain such information, and (2) if possible, identify any source that either possesses or is likely to possess such information. Please send all responsive information to:

Ronnie Levin
U.S. Environmental Protection Agency - New England
Office of Environmental Stewardship
One Congress Street, Suite 1100 (SEP)
Boston, MA 02114

A. List of Residential Properties that You Own or Manage:

1. Provide a list of all residential properties, complexes, developments, etc. (henceforth “property”) that You own/have owned or manage/have managed from **June 1, 2006 to the present**.
2. For each property identified in question A.1, identify whether it is Target Housing, and identify how many units are in each property.
3. For each Target Housing property identified in question A.2, provide contact information for both the property owner(s) and the property manager(s), including name, title, address, and phone number. Explain the relationship between You and any other business entity listed.

4. For each Target Housing property identified in question A.2 and located in New England, describe all public rental and/or rehabilitation assistance received. Indicate the program name, if known, including but not limited to:
 - a. Project-based rental assistance from a federal agency (HUD or other);
 - b. HUD multi-family mortgage insurance (FHA);
 - c. HUD-owned multifamily property;
 - d. Rehabilitation assistance from city, county, or state (for example, CDBG or HOME);
 - e. Public housing;
 - f. Tenant-based rental assistance (such as Housing Choice Voucher Program); and/or
 - g. Any other public or private grant funds for Lead-based paint hazard control.

5. For each Target Housing property identified in question A.2 and located in New England, identify which units have children residing in them and provide the ages of the children, including date of birth.

B. Management Company:

If You listed any management company in response to question A.3, above, describe the nature of the management company's duties and provide a copy of the contract with the management company.

C. Information on Lease Transactions:

Provide the total number of Target Housing leases executed by You in New England from **June 1, 2006 through June 30, 2008**. Provide the following information for all lease transactions of Target Housing You own or manage in New England that occurred from **July 1, 2007 to October 31, 2007 and March 1, 2008 to June 30, 2008**. For each unit leased, provide the following:

1. A copy of the rental agreement, lease or lease extension.
2. A copy of the lead Disclosure Form required by 40 C.F.R. § 745.113 and any attachments thereto;
3. For each rental agreement, lease or lease extension, indicate whether there were children residing in the unit, and if so, their ages at the time of the agreement (or date of birth); and
4. Copies of Lead-based paint information, regardless of the date of such information, including:

- a. Any Inspection and/or Risk Assessment for Lead-based paint performed at the property (including, for multi-family buildings, any report regarding Lead-based paint in common areas of the building);
 - b. Any communication from state or local agencies pertaining to Lead-based paint or Lead-based paint hazards in the property, including Inspection Reports, Abatement Orders, Notices of Compliance, Releases of Orders, Vacancy Orders, etc.; and
 - c. Due Diligence or financial records, in which the environmental conditions of the property were described.
5. If no written records exist regarding a lease transaction, provide a list of tenant names/phone numbers, and for each tenant:
- a. Identify the address and rental unit the tenant leased;
 - b. Identify the date the tenant became obligated to lease the unit;
 - c. Indicate whether children resided in the unit, and if so, their ages at the time of the lease transaction (or date of birth); and
 - d. Provide copies of any documents which discuss the information referred to in questions C.2 and C.4, above, pertaining to the tenant's unit.

D. Sale of Target Housing:

1. Provide a list of all Target Housing that You sold in New England from **June 1, 2006 through June 30, 2008**.
2. For each transaction, provide a copy of the **offer to purchase contract** and the purchase and sales document, including the lead Disclosure Form and all available records and reports pertaining to Lead-based paint and/or Lead-based paint hazards.

E. Missing Disclosure Forms:

If, in response to questions C and D, You produced any sales or lease transactions without Disclosure Forms, explain:

1. Why the form is missing; and
2. Whether, how, and when You complied with each substantive requirement of 40 C.F.R. § 745.113(b) (for example, the requirements to provide a pamphlet, provide information on the presence of known Lead-based paint and/or Lead-based paint hazards or a statement that there is no knowledge, and if there is knowledge, to provide copies of additional information, such as reports that were the basis for the determination that known Lead-based paint and/or Lead-based paint hazards exist).

F. Compliance with the Pre-Renovation Rule Requirements:

1. Provide a listing of all Work Orders for repair and Renovation of Your Target Housing property in New England that involved disturbing over two square feet of painted surface for the period **June 1, 2006 through June 30, 2008**, including common areas, but excluding the following:
 - a. Units vacant at the time of the repair/Renovation;
 - b. Minor repair and maintenance activities that disrupt two square feet or less of painted surface per component;
 - c. Emergency Renovation Operations; and
 - d. Renovations in Target Housing in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at 40 C.F.R. § 745.226 or a State or Tribal certification program authorized pursuant to 40 C.F.R. § 745.324) that the components affected by the Renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination.
2. For each of the Work Orders referenced in response to question F.1, indicate who performed the repair/Renovation. Include contact information for the service person including name, whether in-house staff or contractor, contractor license number (if known), lead certification, place of employment, address and phone number.
3. For each of the Work Orders referenced in response to question F.1, provide copies of documentation demonstrating compliance with the Pre-Renovation Rule. If no documents are available, explain why and whether or not the substantive requirements have been met. Compliance requirements are specified at 40 C.F.R. §§ 745.85-86, and generally include the following notification and recordkeeping activities:
 - a. No more than 60 days before beginning Renovation activities, the renovator shall provide unit owners and occupants with the EPA pamphlet entitled "Protect Your Family From Lead In Your Home" and obtain either written acknowledgement of receipt or certification of mailing at least seven days prior to commencing the repair/Renovation activities; and
 - b. The renovator shall retain records necessary to demonstrate compliance for a period of three years following completion of the repair/Renovation.
4. If the repair/Renovation work was performed by Your employees, describe any training, and provide copies of any certification the employees have received regarding lead safe work practices.

G. Communication of Disclosure and Pre-Renovation Rule Requirements:

1. Describe whether and how You currently communicate the requirements of the Disclosure and Pre-Renovation Rules to all of Your employees and associated businesses, agents, and representatives.
2. Provide copies of any standard operating procedures, guidance documents, training documents, and/or directives that You use at present to promote compliance with the lead Disclosure and Pre-Renovation Rules.

III. CLAIMS OF CONFIDENTIAL BUSINESS INFORMATION

Pursuant to the regulations set forth at 40 C.F.R. Part 2, Subpart B, You may choose to assert that part or all of the submitted information is "confidential business information" ("CBI"). Unless such confidentiality claims are asserted at the time the required information is submitted, EPA makes this information available to the public upon request without further notice to You. Information that is CBI may be made available to the public only to the extent set forth in the above cited regulations. Any such claim for confidentiality must conform to the requirements set forth with 40 C.F.R. § 2.203(b).

While You may claim that information is CBI, such claims are unlikely to be upheld if they are challenged unless the information meets all four of the following criteria:

1. Your business has taken reasonable measures to protect the confidentiality of the information and intends to continue to take such measures.
2. The information is not, and has not been, reasonably obtainable without Your business' consent by other persons (other than government bodies) by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding).
3. No statute specifically requires disclosure of the information, and the information is not available elsewhere.
4. Disclosure of the information is likely to cause substantial harm to Your business' competitive position.

Please note the burden of proof is on You to demonstrate that the information satisfies all four criteria. If any portion of Your response contains CBI which You claim as confidential, it is critical that You submit two copies of any such "business information" in accordance with the following procedures:

1. The first copy of any page containing such "confidential business information" must be complete and contain all information. Additionally, each such page must be marked conspicuously to indicate that it is claimed as confidential. Furthermore, the compilation of information subject to Your CBI claim should be mailed to EPA-New England in accordance with the following procedures:

- a. All such documents must be placed in an envelope addressed to:

Rose Toscano
U.S. Environmental Protection Agency-New England
Office of Environmental Stewardship
One Congress Street, Suite 1100 (SEP)
Boston, MA 02114

This envelope should be marked "Confidential - To be Opened By Addressee Only"; and

- b. The envelope containing the information claimed as business confidential should then be placed in a second, "outer" envelope, also addressed to Rose Toscano at the address indicated above. The outer envelope should not be marked with any indication that it contains confidential information.
2. The second copy of any document that is subject to a CBI claim must only contain information which is not claimed as confidential. This second copy of any document from which alleged CBI has been made unreadable, or otherwise removed, must be mailed directly to Ronnie Levin, at the address indicated in Section II above.

If you have any questions concerning this subpoena, please contact Ronnie Levin at (617) 918-1716.

Issued in Boston, Massachusetts the 12th day of August, 2008.

Sam Silverman, acting for
Susan Studlien, Director
Office of Environmental Stewardship
U. S. EPA New England

Enclosures

1. Affidavit
2. Compliance packet with copies of the Pre-Renovation and Disclosure Rules, EPA pamphlet, and the Small Business Form

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 1 / NEW ENGLAND
TSCA Subpoena No.: TSCA-SP-2008-077**

IN THE MATTER OF:

John C. Jones
318 Warren Street
Roxbury, MA 02119

AFFIDAVIT responding to the subpoena issued pursuant to 15 U.S.C. § 2610(c)

I, the undersigned affiant, first being duly sworn, upon an oath, depose and say:

1. Attached hereto are _____ pages of responsive documents and/or records. The attached pages are true and correct copies of documents and/or records that I presently have in my custody and/or control as an agent.
2. I am one of the custodians of the documents and records at issue and am producing true and correct copies of such documents and records in response to a subpoena issued by the U.S. Environmental Protection Agency pursuant to 15 U.S.C. § 2610(c).
3. The documents and records at issue were and/or are received and/or kept in the usual course of the regularly conducted business activities of the persons and entities subject to the above-referenced subpoena. I, and others, rely on such documents and records for the purpose of conducting everyday affairs. Such documents and records are usually prepared, or received, at or near the time of the events to which they related, and are based upon the knowledge of the person transmitting information for the purpose of preparing such documents and records.
4. I have made a diligent search and inquiry for all documents and records that are reasonably described in the subpoena to which this affidavit responds. To my knowledge, there are no documents or records responsive to the subpoena that have not been copied and submitted to the U.S. Environmental Protection Agency.
5. All responses to the inquiries contained in the aforementioned subpoena are true, complete, and accurate.

6. I acknowledge that this affidavit is submitted to the United States in connection with a matter within the jurisdiction of the U.S. Environmental Protection Agency and that any material false statement of fact herein may be a federal crime under Title 18, Section 1001 of the United States Code.

Affiant:

Date: _____

Signature: _____

Type Name: _____

Office or Title: _____

Notary:

Date: _____

Signature: _____

Type Name: _____

Office or Title: _____

SWORN AND SUBSCRIBED TO before me; the undersigned Notary Public on this ____ day of _____, 2008.

Notary Public in and for the State or Territory

of _____ residing at _____

