UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF:

JOHN C. JONES
102 Cedar Street
Roxbury, Massachusetts 02119

Respondent.

EPA Docket Number
TSCA-01-2010-0035

INITIAL DECISION AND DEFAULT ORDER

This is a civil administrative proceeding instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") commenced this proceeding on May 6, 2010, by filing a Complaint and Notice of Opportunity for Administrative Hearing ("Complaint") against Respondent, John C. Jones. In its Complaint, EPA charged Respondent in five counts with fourteen (14) violations of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851, *et seq*., and federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, set forth in 40 C.F.R. Part 745, Subpart F ("Disclosure Rule"). EPA's Complaint proposed civil penalties of $84,600.00 be assessed against the Respondent.

In the currently pending Motion for Default Order, the Complainant alleges that Respondent is in default for failure to file an answer to the Complaint, that the Respondent has violated Section 409 of the TSCA, and requests that a penalty of $84,600.00 be assessed against the Respondent.

Based upon the record in this matter and the following Findings of Fact and Conclusions of Law, and the Determination of Civil Penalty Amount, the Complainant's Motion for Default Order is GRANTED. The Respondent is hereby found to be in default, pursuant to Section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), and a civil penalty in the amount of $84,600.00 is assessed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record, I make the following findings of fact and conclusions of law:

1. Complainant is the United States Environmental Protection Agency, Region 1.
2. Respondent is John C. Jones, a lessor under 40 C.F.R. § 745.103.
3. At all times relevant, Respondent owned and offered for lease residential apartment units located in Boston, Massachusetts at 20 Woodville Street #3 in Roxbury, 48 Edgewood Street #2 in Roxbury, 25 Southwood Street #1 in Roxbury and 176-180 Quincy Street #2 in Dorchester. The housing units were constructed prior to 1978 and meet the definition of target housing under 40 C.F.R. §745.103, and do not fall within any exemption to the Disclosure Rule.
4. On or about December 1, 2007, Respondent entered into a contract with a tenant with at least one child to lease 20 Woodville Street #3.

5. On or about April 1, 2007, Respondent entered into a contract with a tenant with at least one child to lease 48 Edgewood Street #2.
6. On or about July 1, 2008, Respondent entered into a contract with a tenant with at least one child to lease 25 Southwood Street #1.
7. On or about January 1, 2009, Respondent entered into a contract with a tenant with at least one child to lease 176-180 Quincy Street #2.
8. Forty C.F.R. § 745.107(a)(1) requires a lessor of target housing to provide lessees an EPA-approved lead hazard information pamphlet entitled *Protect Your Family from Lead in Your Home,* or an equivalent pamphlet approved by EPA for use in Massachusetts, before the lessee becomes obligated under any contract to lease target housing.
9. Respondent did not provide a copy of the EPA-approved lead hazard pamphlet *Protect Your Family from Lead in Your Home,* or an EPA-approved equivalent pamphlet, to the four tenants described in paragraphs 4 through 7 above before the lessees became obligated under contracts to lease target housing from the Respondent, as required by 40 C.F.R. § 745.107(a)(1). All of these rental units were occupied by at least one child.
10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to the lessees described in paragraphs 4 through 7 above constitutes four (4) violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.
11. A Comprehensive Initial Inspection was conducted at 48 Edgewood Street #2 on December 14, 1991. As documented by the Childhood Lead Poisoning Prevention

Program of the Massachusetts Department of Public Health, at this inspection, inspector Elton Kellman found lead paint violations on-site.

12. A Comprehensive Initial Inspection was conducted at 25 Southwood Street #1 on March 11, 2005. As documented by the Childhood Lead Poisoning Prevention Program of the Massachusetts Department of Public Health, at this inspection, inspector Warren Laskey found lead paint violations on-site. Additionally, a Post-Compliance Assessment Determination was conducted on September 1, 2005 for both 25 Southwood Street #1 and 23 Southwood Street #3, another unit in the same building. At this inspection, inspector Jack Kane found lead paint violations in the common areas of the building. These violations were documented in a Post-Compliance Assessment Determination Report.

13. Forty C.F.R. § 745.107(a)(4) requires a lessor to provide to the lessee, before the lessee becomes obligated under any contract to lease target housing, any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased. This requirement includes common areas, defined in the Disclosure Rule as "portion[s] of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences." 40 C.F.R. § 745.107(a)(4); 40 C.F.R. § 745.103.

14. The records concerning the 1991 Comprehensive Initial Inspection and identification of violations at 48 Edgewood Street #2, the 2005 Comprehensive Initial Inspection and identification of violations at 25 Southwood Street #1, and the 2005 Post-Compliance Assessment Determination and identification of violations at 25

Southwood Street #1, constitute records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased available to Respondent, within the meaning of 40 C.F.R. § 745.107(a)(4).[1] Respondent did not provide these records or reports to the tenants described in paragraphs 5 and 6 above before the tenants became obligated under contracts to lease target housing from the Respondent, as required by 40 C.F.R. § 107(a)(4).

15. Respondent's failure to provide the tenants described in paragraphs 5 and 6 above with records and reports pertaining to lead-based paint and/or lead-based paint hazards at 48 Edgewood Street #2 and 25 Southwood Street #1 constitutes two (2) violations of 40 C.F.R. § 745.107(a)(4) and Section 409 of TSCA, 15 U.S.C. § 2689.

16. Forty C.F.R. § 745.113(b)(1) requires a lessor to include within, or as an attachment to, the contract to lease target housing the "Lead Warning Statement."[2]

17. Respondent did not include the Lead Warning Statement within, or as an attachment to, contracts to lease target housing with the tenants described in paragraphs 4, 5,and 6 above, as required by 40 C.F.R. § 745.113(b)(1).

18. Respondent's failure to include the Lead Warning Statement within, or as an attachment to, the contracts to lease target housing with the tenants described in paragraphs 4, 5, and 6 above constitutes three (3) violations of 40 C.F.R. § 745.113(b)(1) and TSCA Section 409, 15 U.S.C. § 2689.

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[1] Property records indicate that Respondent acquired the property in 1983 and therefore owned the units at the time of these inspections.

[2] The lead warning statement reads as follows:

> Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint hazards in the dwelling. Tenants must also receive a federally approved pamphlet on lead poisoning prevention.

19. Forty C.F.R. § 745.113(b)(2) requires a lessor to include within, or as an attachment to, the contract to lease target housing, a statement by the lessor disclosing the presence of known lead-based paint and/or lead based paint hazards in the target housing being leased or indicating no knowledge thereof.

20. Respondent did not include within, or as an attachment to, the contracts to lease target housing with the tenants described in paragraphs 4, 5, and 6 above, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge thereof, as required by 40 C.F.R. § 745.113(b)(2).

21. Respondent's failure to include within or as an attachment to, the contracts to lease target housing with the tenants described in paragraph 4, 5, and 6 above, a statement by Respondent disclosing the presence of known lead-based paint and/or lead based paint hazards in the target housing being leased or indicating no knowledge thereof constitutes three (3) violations of 40 C.F.R. §745.113(b)(2) and TSCA Section 409, 15 U.S.C. § 2689.

22. Forty C.F.R. § 745.113(b)(3) requires a lessor to include within, or as an attachment to, the contract to lease target housing, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased that have been provided to the lessee or an indication that no such records or reports are available.

23. Respondent did not include within, or as an attachment to, the contracts to lease target housing with the tenants described in paragraphs 4 and 7 above, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based

hazards in the target housing being leased that had been provided to the lessee or an indication that no such records or reports are available, as required by 40 C.F.R. § 745.113(b)(3). [3]

24. Respondent's failure to include within, or as an attachment to, the contracts to lease target housing with the tenants described in paragraphs 4 and 7 above, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased that had been provided to the lessee or an indication that no such records or reports are available constitutes two (2) violations of 40 C.F.R. § 745.113(b)(3) and TSCA Section 409, 15 U.S.C. § 2689.

25. Complainant met with the Respondent on March 25, 2008, and requested information from him. At this meeting the Respondent indicated that he had no knowledge of, and had not complied with the Disclosure Rule and that he did not use disclosure forms.[4]

26. Complainant requested additional information of the Respondent who agreed to deliver it to Complainant by April 23, 2008. When the requested information was not provided, a subpoena for the information was issued dated August 13, 2008. Respondent submitted some of the requested information on May 21, 2009, and more information on October 23, 2009. His response to the subpoena confirmed that "all units have children residing in them" but failed to indentify the ages of the children.[5]

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[3] Complainant's "Memorandum in Support of Motion for Default Order," July 15, 2011, Exhibit 12, Second Response to subpoena October 23, 2009 included several documents provided by the Respondent pertaining to lead-based paint and/or lead based paint hazards in the identified housing. These documents were not listed in the contracts to lease the target housing to the tenants described in paragraphs 4 and 7 above.

[4] Complainant's " Memorandum in Support of Motion for Default Order," July 15, 2011, Exhibit 1, "Complaint and Notice of an Administrative Hearing, ¶ 19.

[5] Complainant's "Memorandum in Support of Motion for Default Order," July 15, 2011,Exhibit 11, p. 6 of 32, handwritten response of John Jones.

27. Complainant filed the "Complaint and Notice of Opportunity for Administrative Hearing" alleging fourteen violations of Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851, *et seq*., and federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, set forth in 40 C.F.R. Part 745, Subpart F with the Regional Hearing Clerk on May 6, 2010.

28. The "Complaint and Notice of Opportunity for Administrative Hearing" was served on Respondent by first class certified mail, in accordance with Rule 22.5 of the Consolidated Rules of Practice, 40 C.F.R. § 22.5.

29. Rule 22.7 of the Consolidated Rules, 40 C.F.R. § 22.7(c), states that service of a Complaint is complete when the return receipt is signed.

30. Respondent signed a receipt for delivery of the Complaint on May 7, 2010.[6]

31. Rule 22.15(c)of the Consolidated Rules, 40 C.F.R. § 22.15(c), states that Respondent has a right to request a hearing, incorporated within a written answer, and must file a response to the Complaint within 30 days of service.

32. The Respondent asked for and received two time extensions to the deadline for filing an answer. The extended deadline for filing an answer lapsed on August 15, 2010, and the Respondent has not filed an answer.

33. Pursuant to Rule 22.17 (a) of the Consolidated Rules of Practice, 40 C.F.R. Part 22.17(a), a party may be found in default upon the failure to file a timely answer to a

[6] "Complainant's Memorandum in Support of Motion for Default Order," July 15, 2011, Exhibit 2, US Postal Service delivery record scanned signature and address of recipient of Certified Mail item number 7008 1830 0002 8344 9023.

Complaint. Default by a respondent constitutes an admission of the facts alleged in the Complaint and a waiver of the right to contest such facts.

34. Complainant sent to the Respondent by certified mail on July 15, 2011, a copy of a "Motion for Default Order" stating that the Respondent had failed to file a timely answer to the Complaint and requesting a penalty of $84,600.00.

35. Rule 22.15(c) of the Consolidated Rules, 40 C.F.R. § 22.15(c), states that service for all documents other than the Complaint is complete upon mailing.

36. Respondent has not filed a response to the Motion for Default Order.

37. Forty C.F.R. § 22.16(b) states that failure to file a response to a Motion for Default Order within fifteen (15) days of service is deemed to be a waiver of any objection to the granting of the Motion.

DETERMINATION OF CIVIL PENALTY AMOUNT

Complainant requests the assessment of a penalty of $84,600.00 for the violations stated in the Complaint. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and 40 C.F.R. Part 745, Subpart F, authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, of up to $11,000 for each violation of the Disclosure Rule occurring after July 28, 1997 through January 12, 2009, as adjusted by the Debt Collection and Improvement Act of 1996, found at 31 U.S.C. § 3701, and 40 C.F.R. Part 19. In determining the amount of any penalty to be assessed, consideration is given to the statutory factors including the nature, circumstances, extent, and gravity of the violation or violations, and with respect to the violator, ability to pay, effect on ability to continue to do business, and any history of prior such violations, the degree of culpability, and other such matters as justice may

require. 15 U.S.C. § 2615(a) (2) (B). EPA has issued guidelines for penalties under TSCA that incorporate the statutory factors listed above in a document titled, "*Section 1018 Disclosure Rule Enforcement Response and Penalty Policy* ("ERPP"), dated December 2007 and updated by 73 Fed. Reg. 75340 (Dec. 11, 2008). The ERPP considers the risk factors for exposure to lead-based paint and lead-based paint hazards.

I have considered the statutory criteria at 15 U.S.C. § 2615(a) (2) (B) and the guidance of the ERPP in light of the facts of this case, and have found that the proposed penalty of $84,600.00 is an appropriate penalty.

Under the ERPP, there are two components to the penalty calculation: (1) determination of a "gravity-based penalty" and (2) upward or downward adjustments to the gravity-based penalty. The gravity-based penalty is determined by considering the nature and circumstances of the violation, and the extent of harm that may result from the violation. Each type of violation is assigned a "circumstance level" and an "extent," the combination of which determines the gravity-based penalty for each violation of the Disclosure Rule.

The "nature" of a violation is the essential character of the violation. Under the ERPP, the "nature" of violations of the Lead-Based Paint Disclosure Rule is a factor to be incorporated into the consideration of the "circumstances" and the "extent" of the violations. The record indicates that the nature of violations in this case is "hazard assessment," in that Respondent's failure to provide information concerning lead-based paint and/or lead-based paint hazards in the target housing prevented tenants from assessing the potential health consequences of exposure to such lead-based paint and /or lead-based paint hazards.

The "circumstance level" of the violation reflects the probability that a buyer or lessee of property will suffer harm based on the particular violation. Harm is defined as the degree to

which the buyer or lessee is denied the ability to properly assess and weigh the potential for human health risk from exposure to lead-based paint when entering into a transaction to buy or lease target housing. Under the ERPP circumstance levels range from 1 to 6, "Level 1 or 2" having the highest potential for impairing a tenant's ability to assess information required to be disclosed; "Level 3 or 4" having a medium potential for impairing a tenant's ability to assess information required to be disclosed; and "Level 5 or 6" having the lowest potential for impairing a tenant's ability to assess information required to be disclosed.

The record in this case supports a finding that Respondent's four (4) violations of 40 C.F.R. § 745.107(a)(1), by failing to provide the lead hazard information pamphlet, resulted in a high probability of impairing the ability of the lessees to assess the potential for exposure to lead-based paint. Without this information, the tenants could not accurately assess the potential for exposure to lead-based paint hazards. Therefore, it is appropriate to categorize such violations as Circumstances Level 1 for purposes of calculating the penalty. These violations are described in the Complaint as "Count 1".[7]

The record in this case supports a finding that Respondent's two (2) violations of 40 C.F.R. § 745.107(a)(4), by failing to provide records or reports pertaining to the presence of lead-based paint or lead based paint hazards in the target housing, also resulted in a high probability of impairing his tenants' ability to assess the potential for exposure to lead-based paint. Therefore, it is appropriate to categorize these violations as Circumstance Level 1 for purposes of calculating the penalty. These violations are described in the Complaint as "Count 2".

The record in this case supports a finding that the Respondent's three (3) violations of 40 C.F.R. § 745.113(b)(1), by failing to include the "Lead Warning Statement" within, or as an

[7] Complainant's " Memorandum in Support of Motion for Default Order," July 15, 2011, Exhibit 1.

attachment to, contracts to lease target housing, also resulted in a high probability of impairing his tenants' ability to properly assess the risks associated with exposure to lead-based paint. Therefore, it is appropriate to categorize these violations as Circumstances level 2 for purposes of calculating the penalty. These violations are described in the Complaint as "Count 3".

The record in this case supports a finding that Respondent's three (3) violations of 40 C.F.R. § 745.113(b)(2), by failing to include a statement within or as an attachment to the contract to lease the target housing disclosing the presence of known lead-based paint and/or lead based paint hazards in the target housing being leased or indicating no knowledge thereof, resulted in a medium probability of impairing his tenant's ability to properly assess the risks associated with exposure to lead-based paint. Therefore, it is appropriate to categorize these violations as a Circumstance Level 3 for purposes of calculating the penalty. These violations are described in the Complaint as "Count 4".

Finally, the record in this case supports a finding that Respondent's two (2) violations of 40 C.F.R. § 745.113(b)(3), by failing to include within the lease contract, or as an attachment thereto, a list of records pertaining to lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or to indicate that no such list exists, resulted in a medium probability of impairing his tenants' ability to properly assess the risks associated with exposure to lead-based paint. Therefore, it is appropriate to categorize these violations as Circumstance Level 5 for purposes of calculating the penalty. These violations are described in the Complaint as "Count 5".

The "extent" of the harm of a violation is determined to be "major," "significant," or "minor," depending on whether risk factors are high for childhood lead poisoning to occur as the result of the violation. "Extent" is determined by two facts: the age of any children living in the

target housing at the time of the lease, and whether any pregnant women live in the target housing. The ERPP provides that where the age of the youngest individual residing in target housing is not known that the EPA may use the "significant" extent factor for purposes of calculating its penalty. At this time, the ages of the children residing in the target housing units at issue are not known to Complainant despite its attempts to obtain this information.

The "nature," "circumstance," and "extent" factors are incorporated into the "Gravity Based Penalty Matrix" of the ERPP to determine the gravity-based penalty amount. The gravity-based penalty for the violations identified above result in the following assessments:

Count 1--4 violations --at Circumstance Level 1-- with a "significant" extent=$7,740.00 x 4=

$30,960.00

Count 2--2 violations—at Circumstance Level 1--with a "significant" extent=$7,740.00 x 2=

$15,480.00

Count 3--3 violations—at Circumstance Level 2--with a "significant" extent=$6,450.00 x 3=

$19,350.00

Count 4--3 violations—at Circumstance Level 3--with a "significant" extent=$5,160.00 x 3=

$15,480.00

Count 5—2 violations—at Circumstance Level 5—with a "significant" extent=$1680.00 x 2=

$3,360.00

The sum of these assessments results in a total penalty of $84,600.00.

After calculating the gravity-based penalty, the ERPP provides for consideration of additional factors, consistent with TSCA, for upward or downward adjustment of the gravity-based penalty. Under TSCA Section 16(a) (2) (B), the following factors must be considered:

ability to pay/ability to continue in business; history of prior violations; degree of culpability; and such other factors as justice may require. 15 U.S.C. § 2615(a) (2) (B).

Complainant does not seek, and I do not find that the record supports any upward adjustment of the gravity-based penalty for a history of violations.

With respect to Respondent's ability to pay and ability to continue to do business, I find that the Respondent has waived any claim that he cannot afford to pay the penalty. The record reflects that Respondent had an opportunity to raise and substantiate an inability-to-pay claim, both after filing the Complaint (when EPA supplied Respondent with a list of required financial documentation) and again during subsequent discussions between the parties. Respondent has not provided the necessary financial documentation.

Complainant has the duty to make a *prima facie* case that the penalty is appropriate based on a consideration of all the statutory factors, including a respondent's ability to pay. EPA may *presume* that the Respondent has an ability to pay the penalty if it has not been put at issue by the Respondent. [8] The record contains several facts that may indicate the financial ability of the Respondent to pay the penalty, including discussions with the Respondent suggesting that he did not have the ability to pay the proposed penalty. The record also reveals that the Complainant considered the limited information available to it regarding the Respondent's financial status. This information included identification of the Respondent's significant real estate holdings and likely rental income. Therefore, even had the Respondent successfully placed ability to pay at issue in this case, Complainant has shown that it relied on, at least, "general financial information" sufficient to "support the inference that the penalty assessment need not be

[8] See *In re New Waterbury, Ltd.*, 5 E.A.D. 541 (EAB 1994). See also *In re Cutler*, 11 E.A.D. 622, 632 (EAB 2004); *In re Spitzer Great Lakes*, 9 E.A.D. 320, 321 (EAB 2000), quoting *In re New Waterbury, Ltd,* 5 E.A.D. at 541

reduced."[9] The Respondent has not filed an answer to the Complaint or documented a claim of any adverse economic impact or inability to pay. Absent any documentation from the Respondent regarding his ability to pay, there is insufficient information to determine Respondent's ability to pay. Therefore, I find that Respondent has waived any claim of inability to pay the penalty and I exercise my discretion to exclude the "ability to pay" and "continue to do business" penalty factors from further consideration.[10] I have considered the record in light of the remaining statutory penalty factors, including history of prior violations and other such matters as justice may require, and have found that no further adjustments to the gravity-based penalty are warranted.

The proposed penalty of $84,600.00 is an appropriate civil penalty to be assessed against Respondent because it is fully supported by the statutory factors found in TSCA for determination of a civil penalty. In assessing this penalty, I find persuasive the rationale for the calculation of the assessed penalty set forth in the Complaint and in the Complainant's Memorandum in Support of Motion for Default Order filed in this proceeding, and incorporate such rationale by reference into this Order.

Forty C.F.R. § 22.17(c) provides that the relief proposed in a motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the statute authorizing the proceeding. Based on my review of the record, I have determined that the $84,600.00 penalty amount requested in the Motion for Default Order is appropriate in light of the statutory penalty factors, and it is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with TSCA, the Residential Lead-Based Paint Hazard Reduction Act, or the Disclosure Rule.

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[9] *CDT Landfill*, 11 E. A. D. at 122 , quoting *New Waterbury*, 5 E.A.D. at 542-43

[10] See *In re Spitzer Great Lakes*, 9 E.A.D/ 321 (EAB 2000) (quoting *In re New Waterbury*, 5 E.A.D. at 541 (EAB 1994).

DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, a Default Order and Initial Decision is hereby ISSUED and Respondent is hereby ORDERED, as follows:

1. Respondent is assessed and shall make payment of a penalty in the amount of $84,600.00.
2. Pursuant to 40 C.F.R. § 22.27(c), this initial decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings, unless: (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this initial decision is served upon the parties; (3) a party moves to set aside this Order, pursuant to 40 C.F.R. § 22.27(c)(3); or (4) the Environmental Appeals Board elects, upon its own initiative, to review this initial decision, pursuant to 40 C.F.R. § 22.30(b).
3. Respondent shall, within thirty (30) calendar days after this Default Order has become final under 40 C.F.R. § 22.27(c), pay the civil penalty by bank, certified, or cashier's check in the amount of $84,600.00, payable to "Treasurer of the United States of America." Respondents should note on these checks the docket number for this matter (EPA Docket No. TSCA-01-2010-0035). The checks shall be forwarded to:

   U.S. Environmental Protection Agency
   Fines & Penalties
   Cincinnati Finance Center
   P.O. Box 979076
   St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and a copy of the check should be forwarded to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

4. A transmittal letter identifying the subject case and EPA docket number (EPA Docket No. TSCA-01-2010-0035), as well as Respondent's name and address must accompany the check.

5. If Respondent fails to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed pursuant to 31 U.S.C. § 3717, 37 C.F.R. § 901.9, and 40 C.F.R. § 13.11.

IT IS SO ORDERED.

February 29, 2012
Date

Jill T. Metcalf
Acting Regional Judicial Officer

Certificate of Service

I hereby certify that the **Initial Decision and Default Order** by Regional Judicial Officer Jill Metcalf in the matter of **John C. Jones, Docket No. TSCA-01-2010-0035**, was served on the parties as indicated.

UPS

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Dated: February 29, 2012

Wanda Santiago

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