



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In Re:

Dobbins, Fisher & Pittman Associates, Inc.
d/b/a Dobbins, Fisher & Pittman Realtors
339 3rd Avenue
South Charleston, WV 25303
Respondent

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Docket No. TSCA-03-2010-0325
Proceeding under Section 16(a)
15 U.S.C. § 2615(a), the Toxic
Substances Control Act

INITIAL DECISION AND DEFAULT ORDER

This Default Order is issued in a case brought under the authority of Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a). The Complaint and Notice of Right to Request Hearing (“Complaint”) alleged that Dobbins, Fisher & Pittman Associates, Inc., d/b/a Dobbins, Fisher & Pittman Realtors (“Respondent”) violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the “Disclosure Rule”).

The Motion for Default Order (“Motion for Default”) filed by Director for the Land and Chemicals Division, EPA Region III (“Complainant”) in this proceeding seeks an Order assessing a twenty-six thousand, five hundred and ten dollar (\$26,510) civil penalty against Respondent in relation to two (2) sales agreements and seven (7) lease agreements associated with nine (9) different target housing units in West Virginia.

FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following

findings of fact:

1. As set forth in the Complaint, the following nine (9) properties listed below are, and at all times relevant to the violations were, “target housing” as defined at RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401 (17), 15 U.S.C. § 2681(17), and 40 C.F.R. §745.103. See 40 C.F.R. §745.103 (defining “target housing” as “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0–bedroom dwelling”).
 - a. 612 Margaret Street, Charleston, WV
 - b. 41 Marilyn Road, Scott Depot, WV
 - c. 5114 Dean Drive, Crosslanes, WV
 - d. 119 Washington Avenue, Dunbar WV
 - e. 1433 Mountain Road, Charleston, WV
 - f. 1422 Fourth Avenue, Charleston, WV
 - g. 649 Gordon Drive, Charleston, WV
 - h. 4614 Venable Avenue, Charleston, WV
 - i. 4308 Jones Avenue, South Charleston, WV
2. As set forth in the Complaint, Respondent Dobbins, Fisher & Pittman Associates, Inc. (“Respondent”) served as an “agent,” as that term is defined in 40 C.F.R. §745.103, for sale and lease agreements associated with the nine different target housing units listed above. See 40 C.F.R. § 745.103 (defining an “agent” as “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.”).

3. On June 30, 2010 an Administrative Complaint was issued to Respondent by the Complainant, pursuant to Section 16(a) of TSCA, 15 U.S.C. §2615(a), the federal regulations set forth at 40 C.F.R. Part 745, Subpart F, and in accordance with 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 (“Consolidated Rules”).
4. The Complaint alleged, in 46 counts, that Respondent violated TSCA and RLBPHRA by:
 - a. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the April 3, 2007 contract for the sale of the Margaret Street Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 17.
 - b. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the April 3, 2007 contract for the sale of the Margaret Street Property included the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 18.
 - c. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 3, 2007 contract for the sale of the Marilyn Road Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 25.
 - d. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the May 3, 2007 contract for the sale of the Marilyn Road Property included the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Comp. ¶ 26.
 - e. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for lease of the Dean Drive Property included, as an attachment or within the contract, the Lead Warning

Statement required by 40 C.F.R. § 745.113(b)(1), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 43.

- f. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 44.
- g. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for lease of the Dean Drive Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 45.
- h. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for lease of the Dean Drive Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 46.
- i. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for lease of the Dean Drive Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 47.
- j. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 745.115(a)(2), that the August 24, 2006 contract for lease of the Dean Drive Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 48.
- k. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 16, 2007 contract for lease of the Washington Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 59.

- l. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 60.
- m. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 61.
- n. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 62.
- o. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 63.
- p. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 64.
- q. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 75.
- r. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R.

- § 115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 76.
- s. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 77.
- t. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 78.
- u. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 79.
- v. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 80.
- w. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 91.
- x. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Disclosure

Statement required by 40 C.F.R. § 745.113(b)(2), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 92.

- y. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 93.
- z. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 94.
- aa. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 95.
- bb. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 96.
- cc. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 107.
- dd. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 108.

- ee. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 109.
- ff. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 110.
- gg. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 111.
- hh. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 112.
- ii. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 123.
- jj. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 124.
- kk. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Disclosure List

required by 40 C.F.R. §745.113(b)(3), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 125.

- ii. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 126.
- mm. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 127.
- nn. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 128.
- oo. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 139.
- pp. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 140.
- qq. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. §745.113(b)(3), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 141.

rr. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 142.

ss. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl ¶ 143.

tt. Under 40 C.F.R. § 745.118(e), failing to ensure, pursuant to 40 C.F.R. § 115(a)(2), that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6), in violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689. Compl. ¶ 144.

5. The Complaint did not include a specific penalty proposal for the violations alleged therein.
6. In the Motion for Default, Complainant proposes the specific penalty of twenty-six thousand, five hundred and ten dollars (\$26,510) for the alleged violations.
7. 40 C.F.R. § 22.15(a) provides that Respondent must file an answer with the Regional Hearing Clerk within thirty (30) days after service of the complaint, and 40 C.F.R. § 22.15(c) provides that the Respondent has a right to request a hearing upon the issues raised by the complaint and answer.
8. 40 C.F.R. § 22.17(a) further provides that a party may be found in default “after motion, upon failure to file a timely answer to the complaint: Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations.”

9. As stated in the Motion for Default and in the supporting Memorandum, on July 1, 2010 Complainant successfully served the Complaint upon the Respondent at the Respondent's corporate business address via a "reliable commercial delivery service that provides written verification of delivery" within the meaning of 40 C.F.R. § 22.5(b)(1) (i.e., United Parcel Service), as evidenced by a UPS Proof of Delivery notice confirming the delivery.
10. Respondent did not file an Answer to the Complaint within thirty (30) days of service and has not, to date, filed an answer or other response to the Complaint.
11. On November 10, 2010 the Motion for Default was successfully served on Respondent via United States Parcel Service, as evidenced by a UPS Proof of Delivery notice confirming the delivery.
12. The Respondent did not file a response to the Motion for Default.

CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following conclusions of law.

1. The Complaint in this action was lawfully and properly served upon Respondent in accordance with the Consolidated Rules. See 40 C.F.R. § 22.5(b)(1)(ii)(A).
2. Respondent was required to file an Answer to the Complaint within thirty (30) days of service of the Complaint. See 40 C.F.R. § 22.15(a).
3. Respondent failed to file an Answer to the Complaint, and such failure to file an Answer to the Complaint, or otherwise respond to the Complaint, constitutes an admission of all facts alleged in the Complaint, for the purposes of the pending

proceeding only, and a waiver of Respondent's right to a hearing on such factual allegations. See 40 C.F.R. §22.17(a).

4. Complainant's Motion for Default was lawfully and properly served on Respondent. See 40 C.F.R. § 22.5(b)(2).
5. Because the Motion for Default was properly served by overnight delivery, Respondent was required to file any response to the Motion for Default within fifteen (15) days of service. See 40 C.F.R. §§ 22.7(c) and 22.16(b).
6. Respondent failed to respond to the Motion for Default, and such failure to respond to the Motion for Default is deemed to be a waiver of any objection to the granting of the Motion. See 40 C.F.R. § 22.16(b).
7. The following nine (9) properties listed below are and, at all times relevant to the violations, were "target housing" as defined at RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401 (17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.
 - a. 612 Margaret Street, Charleston, WV
 - b. 41 Marilyn Road, Scott Depot, WV
 - c. 5114 Dean Drive, Crosslanes, WV
 - d. 119 Washington Avenue, Dunbar WV
 - e. 1433 Mountain Road, Charleston, WV
 - f. 1422 Fourth Avenue, Charleston, WV
 - g. 649 Gordon Drive, Charleston, WV
 - h. 4614 Venable Avenue, Charleston, WV
 - i. 4308 Jones Avenue, South Charleston, WV

Compl. ¶ 6.

8. As stated in the Complaint, Respondent served as an “agent,” as that term is defined in 40 C.F.R. § 745.103 for sale and lease agreements associated with the nine different target housing units listed above. See Compl. ¶¶ 12, 20, 34, 50, 66, 82, 98, 114, 130.

MARGARET STREET PROPERTY

COUNT I

(Failure to ensure that the contract for sale of the Margaret Street Property included the Receipt of Information Statement)

9. The Margaret Street Property was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined by 40 C.F.R. § 745.103. Compl. ¶ 13; see 40 C.F.R. § 745.103 (defining “housing for the elderly” as “retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy” and “0-bedroom dwelling” as “any residential dwelling in which the living area is not separated from the sleeping area”).
10. Pursuant to 40 C.F.R. § 745.115(a)(2), each agent shall ensure compliance with all requirements of 40 C.F.R. Part 745, Subpart F, and each agent shall “ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113.”
11. 40 C.F.R. § 745.113(a)(2) provides, in relevant part, that each contract shall include as an attachment:

A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold

or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.

12. 40 C.F.R. § 745.113(a)(4) provides, in relevant part, that each contract to sell target housing shall include as an attachment “[a] statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.” (“Receipt of Information Statement”).
13. Respondent failed to ensure that the April 3, 2007 contract for the sale of the Margaret Street Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4). Compl. ¶ 15.
14. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the April 3, 2007 contract for the sale of the Margaret Street Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4).

COUNT II

(Failure to ensure that the contract for sale of the Margaret Street Property included
the Risk Assessment Statement)

15. The Margaret Road Property was housing constructed prior to 1978 and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined by 40 C.F.R. § 745.103. Compl. ¶ 13.

16. Pursuant to 40 C.F.R. § 745.115(a)(2), each agent shall ensure compliance with all requirements of 40. C.F.R. Part 745, Subpart F which includes, in relevant part, that agents are required to “ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113.”
17. 40 C.F.R. § 745.113(a)(5) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “[a] statement by the purchaser that he/she has either:
- i. Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or
 - ii. Waived the opportunity.” (“Risk Assessment Statement”).
18. Respondent failed to ensure that the April 3, 2007 contract for the sale of the Margaret Street Property included the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5) Compl. ¶ 16.
19. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the April 3, 2007 contract for the sale of the Margaret Street Property included the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5).

MARILYNN ROAD PROPERTY

COUNT III

(Failure to ensure that the contract for sale of the Marilyn Road Property included
the Receipt of Information Statement)

20. Pursuant to 40 C.F.R. § 745.115(a)(2), each agent shall ensure compliance with all requirements of 40. C.F.R. Part 745, Subpart F which includes, in relevant part, that

agents are required to “ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113.”

21. 40 C.F.R. § 745.113(a)(2) provides, in relevant part, that each contract shall include as an attachment:

A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces.

22. 40 C.F.R. § 745.113(a)(4) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “[a] statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696” (“Receipt of Information Statement”).

23. Respondent failed to ensure that the May 3, 2007 contract for the sale of the Marilynn Road Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4). Compl. ¶ 23.

24. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 3, 2007 contract for the sale of the Marilynn Road Property included the Receipt of Information Statement required by 40 C.F.R. § 745.113(a)(4).

COUNT IV

(Failure to ensure the contract for sale of the Marilyn Road Property included the Risk Assessment Statement)

25. Pursuant to 40 C.F.R. § 745.115(a)(2), each agent shall ensure compliance with all requirements of 40 C.F.R. Part 745, Subpart F which includes, in relevant part, that agents are required to “ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113.”
26. 40 C.F.R. § 745.113(a)(5) provides, in relevant part, that each contract to sell target housing shall include as an attachment, “[a] statement by the purchaser that he/she has either:
- (i) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or
 - (ii) Waived the opportunity.” (“Risk Assessment Statement”).
27. Respondent failed to ensure that the May 3, 2007 contract for the sale of the Marilyn Road Property included the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5). Compl. ¶ 24.
28. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 3, 2007 contract for the sale of the Marilyn Road Property included the Risk Assessment Statement required by 40 C.F.R. § 745.113(a)(5).

DEAN DRIVE PROPERTY

COUNT V

(Failure to ensure that the contract for lease of the Dean Drive Property included the
Lead Warning Statement)

29. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.
30. The August 24, 2006 contract for lease of the Dean Drive Property did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). Compl. ¶ 37. A Lead Warning Statement was included in a form later appended to such contract on June 25, 2008. Id.
31. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1).

COUNT VI

(Failure to ensure that the contract for lease of the Dean Drive Property included the
Disclosure Statement)

32. Pursuant to 40 C.F.R. § 745.113(b)(2) each contract to lease target housing shall include, as an attachment or within the contract:

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 of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the

location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces. (“Disclosure Statement.”)

33. The August 24, 2006 contract for lease of the Dean Drive Property did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). Compl. ¶ 38. A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008. Id.
34. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2).

COUNT VII

(Failure to ensure that the contract for lease of the Dean Drive Property included the Disclosure List)

35. Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing shall include, as an attachment or within the contract:
- [a] list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate. (“Disclosure List”).
36. The August 24, 2006 contract for lease of the Dean Drive Property did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). Compl. ¶ 39. A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008. Id.

37. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3).

COUNT VIII

(Failure to ensure that the contract for lease of the Dean Drive Property included the Receipt of Information Statement)

38. Pursuant to 40 C.F.R. § 745.113(b)(4) each contract to lease target housing shall include, as an attachment or within the contract, “[a] statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.” (“Receipt of Information Statement”).
39. The August 24, 2006 contract for lease of the Dean Drive Property did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). Compl. ¶ 40. A Receipt of Information Statement was included in a form later appended to such contract on June 25, 2008. Id.
40. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

COUNT IX

(Failure to ensure that the contract for lease of the Dean Drive Property included the Agent Statement)

41. Pursuant to 40 C.F.R. § 745.113(b)(5) each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:
- i. The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d; and
 - ii. The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]. (“Agent Statement”).
42. The August 24, 2006 contract for lease of the Dean Drive Property did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). Compl. ¶ 41. An Agent Statement was included in a form later appended to such contract on June 25, 2008. Id.
43. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5).

COUNT X

(Failure to ensure that the contract for lease of the Dean Drive Property included the Certification of Accuracy)

44. Pursuant to 40 C.F.R. § 745.113(b)(6) each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature” (“Certification of Accuracy”).

45. The August 24, 2006 contract for lease of the Dean Drive Property did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). Compl. ¶ 42. A Certification of Accuracy was included in a form later appended to such contract on June 25, 2008. Id.
46. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 24, 2006 contract for the lease of the Dean Drive Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).

WASHINGTON AVENUE PROPERTY

COUNT XI

(Failure to ensure that the contract for lease of the Washington Avenue Property included the Lead Warning Statement)

47. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.
48. The May 16, 2007 contract for lease of the Washington Avenue Property did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). Compl. ¶ 53. A Lead Warning Statement was included in a form later appended to such contract on June 10, 2008. Id.
49. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment

or within the contract, the Lead Warning Statement required by 40 C.F.R.

§ 745.113(b)(1).

COUNT XII

(Failure to ensure that the contract for lease of the Washington Avenue Property
included the Disclosure Statement)

50. Pursuant to 40 C.F.R. § 745.113(b)(2) each contract to lease target housing shall include, as an attachment or within the contract:

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 of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces. (“Disclosure Statement”).

51. The May 16, 2007 contract for lease of the Washington Avenue Property did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). Compl.

¶ 54. A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 10, 2008. Id.

52. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R.

§ 745.113(b)(2).

COUNT XIII

(Failure to ensure that the contract for lease of the Washington Avenue Property included the Disclosure List)

53. Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing shall include, as an attachment or within the contract:

A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate. (“Disclosure List”).

54. The May 16, 2007 contract for lease of the Washington Avenue Property did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). Compl. ¶ 55. A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 10, 2008. Id.

55. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3).

COUNT XIV

(Failure to ensure that the contract for lease of the Washington Avenue Property included the Receipt of Information Statement)

56. Pursuant to 40 C.F.R. § 745.113(b)(4) each contract to lease target housing shall include, as an attachment or within the contract, “[a] statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and

- the lead hazard information pamphlet required under 15 U.S.C. 2696” (“Receipt of Information Statement”).
57. The May 16, 2007 contract for lease of the Washington Avenue Property did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). Compl. ¶ 56. A Receipt of Information Statement was included in a form later appended to such contract on June 10, 2008. Id.
58. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 16, 2007 contract for lease of the Washington Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

COUNT XV

(Failure to ensure that the contract for lease of the Washington Avenue Property included the Agent Statement)

59. Pursuant to 40 C.F.R. § 745.113(b)(5) each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:
- i. The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d; and
 - ii. The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]. (“Agent Statement”).
60. The May 16, 2007 contract for lease of the Washington Avenue Property did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). Compl. ¶ 57. An Agent Statement was included in a form later appended to such contract on June 10, 2008. Id.

61. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 16, 2007 contract for the lease of the Washington Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5).

COUNT XVI

(Failure to ensure that the contract for lease of the Washington Avenue Property included the Certification of Accuracy)

62. Pursuant to 40 C.F.R. § 745.113(b)(6) each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature.” (“Certification of Accuracy”).
63. The May 16, 2007 contract for lease of the Washington Avenue Property did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). Compl. ¶ 58. A Certification of Accuracy was included in a form later appended to such contract on June 10, 2008. Id.
64. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 16, 2007 contract for lease of the Washington Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).

MOUNTAIN ROAD PROPERTY

COUNT XVII

(Failure to ensure that the contract for lease of the Mountain Road Property included
the Lead Warning Statement)

65. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.
66. The May 31, 2007 contract for lease of the Mountain Road Property did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). Compl. ¶ 69. A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008. Id.
67. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1).

COUNT XVIII

(Failure to ensure that the contract for lease of the Mountain Road Property included
the Disclosure Statement)

68. Pursuant to 40 C.F.R. § 745.113(b)(2) each contract to lease target housing shall include, as an attachment or within the contract:
- [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 of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the

known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces. (“Disclosure Statement”).

69. The May 31, 2007 contract for lease of the Mountain Road Property did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). Compl. ¶ 70. A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 19, 2008. Id.
70. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2).

COUNT XIV

(Failure to ensure that the contract for lease of the Mountain Road Property included the Disclosure List)

71. Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing shall include, as an attachment or within the contract:
- A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate. (“Disclosure List”).
72. The May 31, 2007 contract for lease of the Mountain Road Property did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). Compl. ¶ 71. A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 19, 2008. Id.

73. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3).

COUNT XX

(Failure to ensure that the contract for lease of the Mountain Road Property included the Receipt of Information Statement)

74. Pursuant to 40 C.F.R. § 745.113(b)(4) each contract to lease target housing shall include, as an attachment or within the contract, “[a] statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.” (“Receipt of Information Statement”).
75. The May 31, 2007 contract for lease of the Mountain Road Property did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). Compl. ¶ 72. A Receipt of Information Statement was included in a form later appended to such contract on June 19, 2008. Id.
76. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 31, 2007 contract for lease of the Mountain Road Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

COUNT XXI

(Failure to ensure that the contract for lease of the Mountain Road Property included the Agent Statement)

77. Pursuant to 40 C.F.R. § 745.113(b)(5) each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:
- i. The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d; and
 - ii. The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]. (“Agent Statement”).

78. The May 31, 2007 contract for lease of the Mountain Road Property did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). Compl. ¶ 73. An Agent Statement was included in a form later appended to such contract on June 19, 2008.
Id.

79. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 31, 2007 contract for the lease of the Mountain Road Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5).

COUNT XXII

(Failure to ensure that the contract for lease of the Mountain Road Property included the Certification of Accuracy)

80. Pursuant to 40 C.F.R. § 745.113(b)(6) each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents,

and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature.” (“Certification of Accuracy”).

81. The May 31, 2007 contract for lease of the Mountain Road Property did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). Compl. ¶ 74. A Certification of Accuracy was included in a form later appended to such contract on June 19, 2008. Id.
82. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the May 31, 2007 contract for lease of the Mountain Road Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).

FOURTH AVENUE PROPERTY

COUNT XXIII

(Failure to ensure that the contract for lease of the Fourth Avenue Property included the Lead Warning Statement)

83. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.
84. The August 17, 2007 contract for lease of the Fourth Avenue Property did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). Compl. ¶ 85. A Lead Warning Statement was included in a form later appended to such contract on June 5, 2008. Id.
85. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 17, 2007

contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R.

§ 745.113(b)(1).

COUNT XXIV

(Failure to ensure that the contract for lease of the Fourth Avenue Property included the Disclosure Statement)

86. Pursuant to 40 C.F.R. § 745.113(b)(2) each contract to lease target housing shall include, as an attachment or within the contract:

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 of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces. ("Disclosure Statement.")

87. The August 17, 2007 contract for lease of the Fourth Avenue Property did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). Compl. ¶ 86. A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 5, 2008. Id.
88. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2).

COUNT XXV

(Failure to ensure that the contract for lease of the Fourth Avenue Property included the Disclosure List)

89. Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing shall include, as an attachment or within the contract:

[a] list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate. (“Disclosure List”).

90. The August 17, 2007 contract for lease of the Fourth Avenue Property did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). Compl. ¶ 87. A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 5, 2008. Id.

91. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3).

COUNT XXVI

(Failure to ensure that the contract for lease of the Fourth Avenue Property included the Receipt of Information Statement)

92. Pursuant to 40 C.F.R. § 745.113(b)(4) each contract to lease target housing shall include, as an attachment or within the contract, “[a] statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and

the lead hazard information pamphlet required under 15 U.S.C. 2696.” (Receipt of Information Statement”).

93. The August 17, 2007 contract for lease of the Fourth Avenue Property did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). Compl. ¶ 88. A Receipt of Information Statement was included in a form later appended to such contract on June 5, 2008. Id.

94. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 17, 2007 contract for lease of the Fourth Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

COUNT XXVII

(Failure to ensure that the contract for lease of the Fourth Avenue Property included the Agent Statement)

95. Pursuant to 40 C.F.R. § 745.113(b)(5) each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:

- i. The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d; and
- ii. The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]. (“Agent Statement”).

96. The August 17, 2007 contract for lease of the Fourth Avenue Property did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). Compl. ¶ 89. An Agent Statement was included in a form later appended to such contract on June 5, 2008.

Id.

97. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 17, 2007 contract for the lease of the Fourth Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5).

COUNT XXVIII

(Failure to ensure that the contract for lease of the Fourth Avenue Property included the Certification of Accuracy)

98. Pursuant to 40 C.F.R. § 745.113(b)(6) each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature.” (“Certification of Accuracy”).
99. The August 17, 2007 contract for lease of the Fourth Avenue Property did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). Compl. ¶ 90. A Certification of Accuracy was included in a form later appended to such contract on June 5, 2008. Id.
100. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the August 17, 2007 contract for lease of the Fourth Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).

GORDON DRIVE PROPERTY

COUNT XXIX

(Failure to ensure that the contract for lease of the Gordon Drive Property included the Lead Warning Statement)

101. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.
102. The September 14, 2007 contract for lease of the Gordon Drive Property did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). Compl. ¶ 101. A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008. Id.
103. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1).

COUNT XXX

(Failure to ensure that the contract for lease of the Gordon Drive Property included the Disclosure Statement)

104. Pursuant to 40 C.F.R. § 745.113(b)(2) each contract to lease target housing shall include, as an attachment or within the contract:

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 of the presence of lead-based paint and/or lead-based paint hazards.

The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces. (“Disclosure Statement”).

105. The September 14, 2007 contract for lease of the Gordon Drive Property did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). Compl.

¶ 102. A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 19, 2008. Id.

106. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. §745.113(b)(2).

COUNT XXXI

(Failure to ensure that the contract for lease of the Gordon Drive Property included the Disclosure List)

107. Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing shall include, as an attachment or within the contract,

[a] list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate. (“Disclosure List”).

108. The September 14, 2007 contract for lease of the Gordon Drive Property did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). Compl. ¶ 103. A statement that the lessor has no reports or records pertaining to lead-based paint or

lead-based paint hazards was included in a form later appended to such contract on June 19, 2008. Id.

109. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3).

COUNT XXXII

(Failure to ensure that the contract for lease of the Gordon Drive Property included the Receipt of Information Statement)

110. Pursuant to 40 C.F.R. § 745.113(b)(4) each contract to lease target housing shall include, as an attachment or within the contract, “[a] statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696” (“Receipt of Information Statement”).
111. The September 14, 2007 contract for lease of the Gordon Drive Property did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). Compl. ¶ 104. A Receipt of Information Statement was included in a form later appended to such contract on June 19, 2008. Id.
112. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

COUNT XXXIII

(Failure to ensure that the contract for lease of the Gordon Drive Property included the Agent Statement)

113. Pursuant to 40 C.F.R. § 745.113(b)(5) each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:
- i. The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d; and
 - ii. The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]. (“Agent Statement”).
114. The September 14, 2007 contract for lease of the Gordon Drive Property did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). Compl. ¶ 105. An Agent Statement was included in a form later appended to such contract on June 19, 2008. Id.
115. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the September 14, 2007 contract for the lease of the Gordon Drive Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5).

COUNT XXXIV

(Failure to ensure that the contract for lease of the Gordon Drive Property included the Certification of Accuracy)

116. Pursuant to 40 C.F.R. § 745.113(b)(6) each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature” (“Certification of Accuracy”).

117. The September 14, 2007 contract for lease of the Gordon Drive Property did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).
Compl. ¶ 106. A Certification of Accuracy was included in a form later appended to such contract on June 19, 2008. Id.
118. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the September 14, 2007 contract for lease of the Gordon Drive Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).

VENABLE AVENUE PROPERTY

COUNT XXXV

(Failure to ensure that the contract for lease of the Venable Avenue Property included the Lead Warning Statement)

119. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.
120. The October 11, 2007 contract for lease of the Venable Avenue Property did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1).
Compl. ¶ 117. A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008 [sic; the correct date is June 25, 2008].¹ Id.
121. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 11, 2007

¹ The record indicates that the date should be June 25, 2008, not June 19, 2008, as June 25, 2008 is the date that a disclosure statement, disclosure list, receipt of information statement, agent statement, and certificate of accuracy were later appended to the lease. See infra, p. 41-44. Therefore, the anomalous reference to June 19, 2008 was in error, presumably a misplaced reference to the date similar documents were appended to the Gordon Drive Property lease. See supra, p. 36. This does not impact the decision in this matter.

contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R.

§ 745.113(b)(1).

COUNT XXXVI

(Failure to ensure that the contract for lease of the Venable Avenue Property included the Disclosure Statement)

122. Pursuant to 40 C.F.R. § 745.113(b)(2) each contract to lease target housing shall include, as an attachment or within the contract:

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 of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces. ("Disclosure Statement").

123. The October 11, 2007 contract for lease of the Venable Avenue Property did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2).

Compl. ¶ 118. A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008. Id.

124. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2).

COUNT XXXVII

(Failure to ensure that the contract for lease of the Venable Avenue Property included the Disclosure List)

125. Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing shall include, as an attachment or within the contract:

A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate. (“Disclosure List”).

126. The October 11, 2007 contract for lease of the Venable Avenue Property did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). Compl. ¶ 119. A statement that the lessor has no reports or records pertaining to lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 25, 2008. Id.

127. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3).

COUNT XXXVIII

(Failure to ensure that the contract for lease of the Venable Avenue Property included the Receipt of Information Statement)

128. Pursuant to 40 C.F.R. § 745.113(b)(4) each contract to lease target housing shall include, as an attachment or within the contract:

A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard

information pamphlet required under 15 U.S.C. 2696.” (“Receipt of Information Statement”).

129. The October 11, 2007 contract for lease of the Venable Avenue Property did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4). Compl. ¶ 120. A Receipt of Information Statement was included in a form later appended to such contract on June 25, 2008. Id.
130. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

COUNT XXXIX

(Failure to ensure that the contract for lease of the Venable Avenue Property included the Agent Statement)

131. Pursuant to 40 C.F.R. § 745.113(b)(5) each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:
- i. The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d; and
 - ii. The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]. (“Agent Statement”).
132. The October 11, 2007 contract for lease of the Venable Avenue Property did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). Compl. ¶ 121. An Agent Statement was included in a form later appended to such contract on June 25, 2008. Id.

133. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 11, 2007 contract for the lease of the Venable Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5).

COUNT XL

(Failure to ensure that the contract for lease of the Venable Avenue Property included the Certification of Accuracy)

134. Pursuant to 40 C.F.R. § 745.113(b)(6) each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature” (“Certification of Accuracy”).
135. The October 11, 2007 contract for lease of the Venable Avenue Property did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). Compl. ¶ 122. A Certification of Accuracy was included in a form later appended to such contract on June 25, 2008. Id.
136. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 11, 2007 contract for lease of the Venable Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).

JONES AVENUE PROPERTY

COUNT XLI

(Failure to ensure that the contract for lease of the Jones Avenue Property included
the Lead Warning Statement)

137. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment or within the contract, a “Lead Warning Statement” containing the language set forth therein.
138. The October 24, 2007 contract for lease of the Jones Avenue Property did not include the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1). Compl. ¶ 133. A Lead Warning Statement was included in a form later appended to such contract on June 19, 2008 [sic; the correct date is June 24, 2008].² Id.
139. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. § 745.113(b)(1).

COUNT XLII

(Failure to ensure that the contract for lease of the Jones Avenue Property included
the Disclosure Statement)

140. Pursuant to 40 C.F.R. § 745.113(b)(2) each contract to lease target housing shall include, as an attachment or within the contract:

² The record indicates that the date should be June 24, 2008, not June 19, 2008, as June 24, 2008 is the date that a disclosure statement, disclosure list, receipt of information statement, agent statement, and certificate of accuracy were later appended to the lease. See infra, p. 45-49. Therefore, the anomalous reference to June 19, 2008 was in error, presumably a misplaced reference to the date similar documents were appended to the Gordon Drive Property lease. See supra, p. 36. This does not impact the decision in this matter.

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 of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards and the condition of the painted surfaces. (“Disclosure Statement”).

141. The October 24, 2007 contract for lease of the Jones Avenue Property did not include the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2). Compl. ¶ 134. A statement that the lessor has no knowledge of lead-based paint or lead-based paint hazards was included in a form later appended to such contract on June 24, 2008. Id.
142. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Disclosure Statement required by 40 C.F.R. § 745.113(b)(2).

COUNT XLIII

(Failure to ensure that the contract for lease of the Jones Avenue Property included the Disclosure List)

143. Pursuant to 40 C.F.R. § 745.113(b)(3) each contract to lease target housing shall include, as an attachment or within the contract:
- A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.” (“Disclosure List”).
144. The October 24, 2007 contract for lease of the Jones Avenue Property did not include the Disclosure List required by 40 C.F.R. § 745.113(b)(3). Compl. ¶ 135. A statement that the lessor has no reports or records pertaining to lead-based paint or

lead-based paint hazards was included in a form later appended to such contract on June 24, 2008. Id.

145. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Disclosure List required by 40 C.F.R. § 745.113(b)(3).

COUNT XLIV

(Failure to ensure that the contract for lease of the Jones Avenue Property included the Receipt of Information Statement)

146. Pursuant to 40 C.F.R. § 745.113(b)(4) each contract to lease target housing shall include, as an attachment or within the contract:

A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.” (“Receipt of Information Statement”).

147. The October 24, 2007 contract for lease of the Jones Avenue Property did not include the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

Compl. ¶ 136. A Receipt of Information Statement was included in a form later appended to such contract on June 24, 2008. Id.

148. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 24, 2007 contract for lease of the Jones Avenue Property included, as an attachment or within the contract, the Receipt of Information Statement required by 40 C.F.R. § 745.113(b)(4).

COUNT XLV

(Failure to ensure that the contract for lease of the Jones Avenue Property included the Agent Statement)

149. Pursuant to 40 C.F.R. § 745.113(b)(5) each contract to lease target housing in which “one or more agents are involved in the transaction . . . on behalf of the lessor” shall include as an attachment or within the contract a statement that:

- i. The agent has informed the lessor of the [lessor’s] obligations under 42 U.S.C. § 4852d; and
- ii. The agent is aware of his/her duty to ensure compliance with the requirements of [40 C.F.R. Part 745, Subpart F]. (“Agent Statement”).

150. The October 24, 2007 contract for lease of the Jones Avenue Property did not include the Agent Statement required by 40 C.F.R. § 745.113(b)(5). Compl. ¶ 137. An Agent Statement was included in a form later appended to such contract on June 24, 2008. Id.

151. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 24, 2007 contract for the lease of the Jones Avenue Property included, as an attachment or within the contract, the Agent Statement required by 40 C.F.R. § 745.113(b)(5).

COUNT XLVI

(Failure to ensure that the contract for lease of the Jones Avenue Property included the Certification of Accuracy)

152. Pursuant to 40 C.F.R. § 745.113(b)(6) each contract to lease target housing shall include as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of the signature” (“Certification of Accuracy”).

153. The October 24, 2007 contract for lease of the Jones Avenue Property did not include the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6). Compl. ¶ 138. A Certification of Accuracy was included in a form later appended to such contract on June 24, 2008. Id.

154. Respondent violated RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689 by failing to ensure that the October 24, 2007 contract for lease of the Jones Avenue Property included, as an attachment or within the contract, the Certification of Accuracy required by 40 C.F.R. § 745.113(b)(6).

RESPONDENT'S CIVIL PENALTY LIABILITY

155. Respondent's failure to comply with the requirements of 40 C.F.R. Part 745, Subpart F, constitutes a violation of TSCA Section 409, 15 U.S.C. § 2689, for which Respondent is liable for civil penalties under TSCA Section 16, 15 U.S.C. § 2615.

156. Respondent's failure to file a timely Answer to the Complaint or otherwise respond to the Complaint is grounds for the entry of a default order against the Respondent assessing a civil penalty for the violations described above. See 40 C.F.R. § 22.17(a).

157. Respondent's failure to file a response to Complainant's Motion for Default is deemed a waiver of Respondent's right to object to the issuance of this Order. See 40 C.F.R. § 22.16(b).

DETERMINATION OF CIVIL PENALTY AMOUNT

158. Complainant requests the assessment of a civil penalty in the amount of twenty six thousand, five hundred and ten dollars (\$26,510.00) for the TSCA violations alleged in the Complaint. The proposed penalty is based upon Complainant's consideration of the statutory penalty factors set forth in Section 16 of TSCA, 15 U.S.C. § 2615,

with specific reference to EPA's December 2007 Section 1018 Disclosure Rule Enforcement Response and Penalty Policy ("ERP"). Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to "take into account the nature, circumstances, extent, and gravity of the 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 other such matters as justice may require" (the "TSCA statutory penalty factors"). Pursuant to the May 9, 1997 memorandum by EPA Assistant Administrator Steven A. Herman entitled, Modifications to EPA Penalty Policies to Implement the Civil Monetary Information Rule, penalties for violations cited in the Complaint which occurred after January 30, 1997 were increased by 10% to reflect the increase in the statutory maximum penalty.

159. The ERP provides a rational, consistent, and equitable methodology for applying the statutory penalty factors enumerated above to the specific facts and circumstances of this case. Under the ERP, the penalty calculation relies primarily on two components: the "circumstances" level and the "extent" level. The "circumstance" level looks at the relative risk that the violation would impair the purchaser's or lessee's ability to evaluate the risks of lead exposure at the property. Circumstance levels range from Level 1 to Level 6, with Level 1 being the most serious. The "extent" level focus is on the overall intent of the rule, which is to prevent childhood lead poisoning. More specifically, the "extent" level looks at the nature of the persons potentially exposed to lead paint hazards, with the highest levels being assigned where the most vulnerable persons (young children and/or pregnant women) will occupy the premises.

160. The penalty proposed by Complainant in this matter was based upon Respondent's failure to comply with certain provisions of the 40 C.F.R. Part 745, Subpart F. Mot. for Default, 1. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant provided an explanation of the number and severity of the violations in the Complaint. Id. at 9-14. Complainant has not obtained information on whether or not children or pregnant women were living in any of the properties at issue. Respondent's failure to file an Answer or otherwise respond to the Complaint or Motion for Default has made it impossible for Complainant to engage in discovery to determine whether or not children or pregnant women were living in any of the properties. Complainant opted to give Respondent the benefit of the doubt and assume that no such individuals were living at the properties. Consequently, the extent level for all violations is "minor" under the ERP. Id. at 9. Therefore, the explanations and associated penalty proposals are as follows:

- A. Violations of 40 C.F.R. § 745.113(a)(4) : Violations of the requirements set forth at 40 C.F.R. § 745.113(a)(4) are deemed to represent a "medium" probability of impairing a purchaser's ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 Violations in the ERP. Failure to obtain a statement confirming the purchaser received disclosure of known lead hazards (or a statement that the owner has no knowledge of the presence of such hazards) prevents both Complainant and Respondent from being able to accurately ascertain whether required disclosures occurred thus creating a moderate risk that the purchaser was not adequately informed of the hazards. As a result, each of the violations alleged in Counts 1 and 3 have been assessed as Circumstance Level 4 violations. Under the ERP a Level 4 violation with a minor extent level is assessed a \$520 penalty.
- B. Violations of 40 C.F.R. § 745.113(a)(5) : Violations of the requirements set forth at 40 C.F.R. § 745.113(a)(5) are deemed to represent a "medium" probability of impairing a purchaser's ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. The failure to obtain a statement verifying that the purchaser received or waived the opportunity to conduct a risk assessment prevents an accurate determination as to

whether the purchaser understood that such an opportunity was offered, and creates a moderate risk that the purchaser was not adequately aware of the hazards. As a result, each of the violations alleged in Counts 2 and 4 have been assessed as Circumstance Level 4 violations. Under the ERP a Level 4 violation with a minor extent level is assessed a \$520 penalty.

- C. Violations of 40 C.F.R. § 745.113(b)(1) : Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(1) are deemed to represent a “high” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 2 violations in the ERP. The failure to provide the required Lead Warning Statement deprived each of the tenants, before they became obligated under the lease, of information they could have used to assess whether to enter into the lease and to better protect themselves and their families, including warnings that exposure to lead-based paint can be particularly harmful to pregnant women and young children, warnings as to the specific exposure of pathways from lead-based paint (i.e. paint, paint chips, and paint dust). The violation leads to a high probability of impairing the ability of the tenant to make an informed decision. As a result, each of the violations alleged in Counts 5, 11, 17, 23, 29, 35, and 41 have been assessed as Circumstance Level 2 violations. Under the ERP a Level 2 violation with a minor extent level is assessed a \$1,550 penalty.
- D. Violations of 40 C.F.R. § 745.113(b)(2) : Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(2) are deemed to represent a “medium” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 3 violations in the ERP. The failure to inform the tenants of known lead hazards or to state that the owner has no knowledge of the presence of such hazards deprived each of the tenants, before they became obligated under the lease, of information they could have used to assess whether to enter in to the lease and to better protect themselves and their families. As a result, each of the violations alleged in Counts 6, 12, 18, 24, 30, 36, and 42 of this Complaint have been assessed as Circumstance Level 3 violations. Under the ERP a Level 3 violation with a minor extent level is assessed a \$770 penalty.
- E. Violations of 40 C.F.R. § 745.113(b)(3) : Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(3) are deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 5 violations in the ERP. The failure to obtain a statement confirming that the lessee received the disclosure of known lead hazards (or statement that the owner has no knowledge of the presence of such hazards) prevents both Complainant and the Respondent from being able to accurately determine if the required disclosures occurred and thus creates a significant but relatively low risk that the purchaser was not adequately informed of the hazards. As a result, each of the violations alleged in Counts 7, 13, 19, 25, 31, 37, and 43 of this Complaint have been assessed as Circumstance Level 5.

Under the ERP a Level 5 violation with a minor extent level is assessed a \$260 penalty.

- F. Violations of 40 C.F.R. § 745.113(b)(4) : Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(4) are deemed to represent a “medium” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 4 violations in the ERP. The failure to obtain a statement confirming that the lessee received a lead hazard pamphlet and the disclosure of known lead hazards (or statement that the owner has no knowledge of the presence of such hazards) prevents both Complainant and the Respondent from being able to accurately determine if the required disclosures occurred and thus creates a significant but low risk that the lessee was not adequately informed of the hazards. As a result, each of the violations alleged in Counts 8, 14, 20, 26, 32, 38, and 44 of this Complaint have been assessed as Circumstance Level 4 violations. Under the ERP a Level 4 violation with a minor extent level is assessed a \$520 penalty.
- G. Violations of 40 C.F.R. § 745.113(b)(5) : Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(5) are deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 5 violations in the ERP. The failure of an agent to document that it informed the lessor of its obligations prevents an accurate determination as to whether the lessor was made aware of those obligations, thus creates a significant but relatively low risk that the lessor did not adequately inform the tenants of the hazards. As a result, each of the violations alleged in Counts 9, 15, 21, 27, 33, 39, and 45 of this Complaint have been assessed as Circumstance Level 5. Under the ERP, a Level 5 violation with a minor extent level is assessed a \$260 penalty.
- H. Violations of 40 C.F.R. § 745.113(b)(6) : Violations of the requirements set forth at 40 C.F.R. § 745.113(b)(6) are deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and are characterized as Circumstance Level 6 violations in the ERP. The failure to obtain signatures from all of the relevant parties makes it difficult to assess whether the other disclosure requirements were complied with, and thus creates a significant but relatively low risk that the lessees were not adequately informed of the hazards. As a result, each of the violations alleged in Counts 10, 16, 22, 28, 34, 40, and 46 of this Complaint have been assessed as Circumstance Level 6. Under the ERP a Level 6 violation with a minor extent level is assessed a \$130 penalty.

161. The penalty requested can be summarized as follows:

Counts		113(a)(1)	113(a)(2)	113(a)(3)	113(a)(4)	113(a)(5)	113(a)(6)	Totals
	Sales Properties							
1-2	612 Margaret Street, Charleston, WV	-	-	-	\$520.00	\$520.00	-	\$1,040.00
3-4	41 Marilyn Road, Scott Depot, WV	-	-	-	\$520.00	\$520.00	-	\$1,040.00
	Rental Properties	113(b)(1)	113(b)(2)	113(b)(3)	113(b)(4)	113(b)(5)	113(b)(6)	
5-10	5114 Dean Drive, Crosslanes, WV	\$1,550.00	\$770.00	\$260.00	\$520.00	\$260.00	\$130.00	\$3,490.00
11-16	119 Washington Avenue, Dunbar WV	\$1,550.00	\$770.00	\$260.00	\$520.00	\$260.00	\$130.00	\$3,490.00
17-22	1433 Mountain Road, Charleston, WV	\$1,550.00	\$770.00	\$260.00	\$520.00	\$260.00	\$130.00	\$3,490.00
23-28	1422 Fourth Avenue, Charleston, WV	\$1,550.00	\$770.00	\$260.00	\$520.00	\$260.00	\$130.00	\$3,490.00
29-34	649 Gordon Drive, Charleston, WV	\$1,550.00	\$770.00	\$260.00	\$520.00	\$260.00	\$130.00	\$3,490.00
35-40	4614 Venable Avenue, Charleston, WV	\$1,550.00	\$770.00	\$260.00	\$520.00	\$260.00	\$130.00	\$3,490.00
41-46	4308 Jones Avenue, South Charleston, WV	\$1,550.00	\$770.00	\$260.00	\$520.00	\$260.00	\$130.00	\$3,490.00
							TOTAL PENALTY	\$26,510.00

162. Complainant does not propose to make any adjustments to the penalty under the factors set forth in the ERP. Id. at 14.

Respondent's Ability to Pay

The burden to raise and prove an inability to pay a penalty rests with the Respondent. "If the Respondent has not met its burden of going forward regarding its inability to pay a civil penalty, the complainant carries no burden on this issue; the respondent will be deemed able to pay the maximum statutory penalty." 56 Fed. Reg. 29996, 30006 (July 1, 1991); see also, In the

Matter of Mr. William J. Fabrick, 3224 Old Westminster Pike, Finksburg, Md. 21048, No. CWA-III-208, 2000 WL 166091, *5 (E.P.A. Apr. 25, 2000) (granting a default motion and finding that the respondent had the ability to pay the proposed penalty because the record was “devoid of any evidence to the contrary”). The Environmental Appeals Board (“E.A.B.”) consistently has held that a respondent’s ability to pay a proposed penalty may be presumed until it is put at issue by a respondent. In re Spitzer Great Lakes Ltd., 9 E.A.D. 302, 219-21 (E.A.B. 2000). Furthermore, where a respondent does not raise its ability to pay as an issue in an answer to a complaint and does not produce any evidence to support such a claim, a complainant may properly argue—and the presiding officer may conclude—that any objection to the penalty based upon ability to pay has been waived and that no penalty reduction is warranted. Id.; see also In re Chempace Corp., 9 E.A.D. 119, 10 n.20 (E.A.B. 2000); In re Antkiewicz, 8 E.A.D. 218, 219-40 (E.A.B. 1999); In re New Waterbury, Ltd., 5 E.A.D. 529, 541-42 (E.A.B. 1994).

The official record is devoid of any information submitted by Respondent raising inability to pay the penalty assessed in this matter. Since any financial information otherwise contained in the record is not otherwise dispositive, I find that Respondent is able to pay.

CONCLUSION

Complainant proposes a penalty of \$26,510.00 against Respondent for the violations alleged in the Complaint in accordance with the statutory factors set forth at Section 16 of TSCA, 15 U.S.C. § 2615.

I have determined that the penalty amount of \$26,510.00 proposed by Complainant and requested in the Motion for Default is not inconsistent with TSCA and the record in this proceeding and is appropriate based on the record and Section 16 of TSCA, 15 U.S.C. § 2615.

ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, Complainant's Motion for Default is hereby **GRANTED**, and Respondent is hereby **ORDERED** as follows:

1. Respondent is hereby assessed a civil penalty in the amount of twenty-six thousand, five hundred and ten dollars (\$26,510.00) and ordered to pay the civil penalty as directed in this Order.
2. Respondent shall pay the civil penalty to the "**United States Treasury**" within thirty (30) days after this Default Order has become final. See ¶ 7 below. Respondent may use the following means for penalty payment:

- a. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen – (513-587-2091)

- b. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen – (513-587-2091)

- c. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York

ABA = 021030004
Account = 69010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”)

- d. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006 Environmental Protection Agency
CTZX Format Transaction Code 22 – Checking

Physical location of the U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact for ACH: John Schmid – (202-874-7026)

- e. On-Line Payment Option:

WWW.PAY.GOV

Enter “sfo 1.1” in the search field.

Open form and complete required fields.

3. At the same time that payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic fund transfer or online payment, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Benjamin D. Fields
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

4. Along with its civil penalty remittance made pursuant to ¶ 2, above, and with the copy of the check or written notification (confirming any electronic fund transfer or online payment) sent pursuant to ¶ 3, immediately above, Respondent shall include a transmittal letter identifying the caption (In re Dobbins, Fisher & Pittman Associates, Inc.) and the docket number (TSCA-03-2010-0325) of this action.
5. In the event of failure by Respondent to make payment as directed above, this matter may be referred to a United States Attorney for recovery by appropriate action in United States District Court.
6. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debt owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.
7. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. §§ 22.17(c) and 22.27(a). This Initial Decision shall become a Final Order forty-five (45) days after it is served upon the Complainant and Respondent unless: (1) a party appeals this Initial Decision to the E.A.B. in accordance with 40 C.F.R. § 22.30,³ (2) a party moves to set aside the Default Order that constitutes the Initial Decision, or

³ Under 40 C.F.R. § 22.30, any party may appeal this Order by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board within thirty (30) days after this Initial Decision is served upon the parties.

(3) the Environmental Appeals Board elects to review the Initial Decision on its own initiative. See 40 C.F.R. § 22.27(c).

IT IS SO ORDERED

July 2, 2013

Date

Renée Sarajian

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

This Initial Decision and Default Order (Docket No.: TSCA-03-2010-0325) was served on the date below, by the manner indicated, to the following people:

VIA HAND DELIVERY:

Benjamin D. Fields
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Bradley Pittman, President
Dobbins, Fisher & Pittman Associates, Inc.
d/b/a Dobbins, Fisher & Pittman Realtors
339 3rd Avenue
South Charleston, WV 25303

VIA EPA POUCH:

Eurika Durr
Clerk of the Board
Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Date

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029