

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of Habeeba Shariff and  
M. Anwar Shariff

Respondents

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) Docket No. TSCA-05-2008-0007  
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Complainant's Initial Prehearing Exchange

The United States Environmental Protection Agency, Region 5 ("Complainant" or "U.S. EPA"), in accordance with the Order dated November 21, 2008 ("Prehearing Order") and Section 22.19(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. § 22.19(a), respectfully submits the following Initial Prehearing Exchange:

I. Expert or Other Witnesses

This section includes the names of witnesses Complainant intends to call, together with a brief narrative summary of each witness's anticipated testimony, as required by Paragraph 1(a) of the Prehearing Exchange Order and 40 C.F.R. § 22.19(a)(2)(i):

- (1) Estrella Calvo, *Environmental Scientist, Land and Chemicals Division, U.S. EPA Region 5*. Ms. Calvo's duties include serving as an enforcement officer and case developer in the investigation of violations of the regulations promulgated by U.S. EPA and the U.S. Department of Housing and Urban Development ("HUD") at 40

C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (the “Disclosure Rule”). Ms. Calvo will testify about her review of the evidence compiled as a result of U.S. EPA’s regulatory oversight of Respondent Habeeba Shariff’s ownership of the building at 3957 N. Ashland Avenue, Chicago, Illinois (Property) and the rental of apartments in the building to tenants and Respondent M. Anwar Shariff’s, management of the same building and his role in the rental of the apartments in the building to tenants. She will also testify to the factual basis for U.S. EPA’s determination that Respondents are in violation of the Toxic Substances Control Act (“TSCA”) and its implementing regulations. Ms. Calvo will testify regarding the manner in which she compiled the documentary evidence regarding Respondent Habeeba Shariff’s ownership and rental of the Property and Respondent M. Anwar Shariff’s management and rental of the Property. Ms Calvo will testify about the inspection conducted on July 26, 2005 at the business location of the property manager, M. Anwar Shariff at 1529A Irving Park Road, Chicago, Illinois (this address is located in the building at 3957 North Ashland Avenue, Chicago, Illinois). She will also testify about how U.S. EPA calculated the penalty proposed in the complaint, applying the statutory penalty factors set forth in Section 16(a) (2) (B) of TSCA, 15 U.S.C. § 2615(a) (2) (B), as explained by U.S. EPA’s Section 1018 - Disclosure Rule Enforcement Response Policy, dated February 2000, and as set forth in greater detail in Section IV, below.

If necessary, Ms. Calvo will testify regarding the delegation of authority pertaining to the Complainant in this matter.

If necessary, Ms. Calvo will provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange.

(2) Pamela Grace, *Lead Inspector, Land and Chemicals Division, U.S. EPA Region 5.*

Ms. Grace's duties include serving as an inspector in the investigation of lead disclosure violations under the Disclosure Rule. Ms. Grace will testify regarding the U.S. EPA/HUD joint initiative to enforce compliance with the requirements of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Ms. Grace will testify regarding the investigation of and inspection she led concerning the 3957 N. Ashland, Chicago, Illinois residential building on July 26, 2005 at the business location of the property manager, M. Anwar Shariff at 1529A Irving Park Road, Chicago, Illinois (this address is located in the building at 3957 North Ashland Avenue, Chicago, Illinois). Ms. Grace will also testify regarding the inspection report and the documentary evidence regarding Respondent Habeeba Shariff's ownership and rental of the Property and Respondent M. Anwar Shariff's management and rental of the Property. She will also testify about her conversation with Respondent M. Anwar Shariff on July 26, 2005.

If necessary, Ms. Grace will provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange.

(3) Edward Pilny, *Lead Inspector, Land and Chemicals Division, U.S. EPA Region 5.*

Mr. Pilny's duties include serving as an inspector in the investigation of lead

disclosure violations under the Disclosure Rule. Mr. Pilny will testify regarding the U.S. EPA/HUD joint initiative to enforce compliance with the requirements of Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Mr. Pilny will testify regarding the conversation he had with Respondent, Ms. Habeeba Shariff and Mr. (Habeeba) Shariff on July 19, 2005 to set up a consensual scheduled Section 1018 Lead-Based Paint Disclosure Rule Compliance Inspection, the response to questions asked during this conversation and the conversation record.

- (4) Dr. Chris Weis, *Senior Toxicologist, National Enforcement Investigations Center, United States Environmental Protection Agency*<sup>1</sup> Dr. Weis is a Senior Toxicologist at the National Enforcement Investigations Center in Denver, Colorado. He may be called as an expert witness to testify about the hazards to human health or the environment presented by lead-based paint, including the hazards associated with lead paint dust, paint chips or particles. Dr. Weis may testify about the various studies and other research that he has conducted with respect to the health effects associated with ingestion of or exposure to lead-based paint. He may offer expert opinion testimony about the specific hazards or potential hazards to human health or the environment posed by lead-based paint, including but not limited to the adverse health effects of lead poisoning, such as the effects on the development or functioning of the brain and internal organs. He may further testify as to how the violations alleged in the complaint may have increased the risks of exposure of

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<sup>1</sup> Dr. Weis' appearance will depend on whether the hearing date is in conflict with other trials in which he is participating.

humans to lead-based paint or lead-based paint dust or other fragments. Dr. Weis may also testify in Region 5's rebuttal case, in response to testimony and other evidence presented by Respondent. Dr. Weis' Personal Qualification Statement (*i.e.*, his CV) is attached as Complainant's Exhibit 16, and his Bibliography is attached as Complainant's Exhibit 17.

- (5) **Cynthia Mack-Smeltzer, Accountant, U.S. Environmental Protection Agency, Region 5.** Ms. Mack-Smeltzer may be called to testify as an expert witness in the areas of analysis of financial information and analyses of ability to pay. Ms. Mack-Smeltzer may testify about her review of Respondents' tax returns, financial statements and other relevant financial information concerning each of the Respondents. She may testify about her assessment of the sufficiency or reliability of the financial information submitted by Respondents, and she may identify other categories of information or areas of inquiry that are relevant to an assessment of each Respondent's ability to pay, including but not necessarily limited to, the need for complete and accurate information about the assets (e.g., real estate and personal property) and the liabilities (e.g., actual loan documents) and expenses of each Respondent.
- Ms. Mack-Smeltzer may also testify about her review of public records obtained by U.S. EPA, and about how the information contained in such records is relevant to the evaluation or assessment of each Respondent's ability to pay. Ms. Mack-Smeltzer may also provide her expert opinions and conclusions as to each Respondent's financial status and ability to pay the penalty proposed in the Complaint.
- Ms. Mack-Smeltzer may also testify about her efforts to analyze the financial status and ability to pay of the Respondents in this case. She may testify about the standard

methodology used by professionals in her field to evaluate the financial status and ability to pay of individuals/corporations/partnerships. She may testify about the need in any ability to pay analysis to identify potential sources of funds by conducting an analysis of the annual cash flow that the party is generating – cash income less cash expenses (which involves the use of at least three years of federal income tax returns as an initial basis for this analysis, supplemented by requests for additional information as required), and the need to fully and accurately identify the party's expenses and assess whether or not all such expenses are reasonable (and if not, what expenses might be pared and what cash flow might then be generated).

Ms. Mack-Smeltzer may testify that analyzing ability to pay also necessarily involves an analysis of the net worth of the individual or party, which entails an accurate and complete identification of all assets (including real estate and personal property) and liabilities. She may testify about the need for individuals who are respondents or defendants to submit a comprehensive financial statement that accurately identifies all of the person's assets and liabilities. She may testify about her assessment of the sufficiency or reliability of the financial information submitted by Respondents. Ms. Mack-Smeltzer may also provide her expert opinions and conclusions as to each Respondent's financial status and ability to pay the penalty proposed in the Complaint. Ms. Mack-Smeltzer may also testify in U.S. EPA's rebuttal case in response to testimony and other evidence presented by Respondents. A curriculum vitae or resume will be submitted for Ms. Mack-Smeltzer as soon as it is prepared.

- (6) Respondent's Witnesses: Complainant reserves the right to call any of Respondent's witnesses in either its case in chief or in its rebuttal case.

Complainant reserves the right not to call any of the above-listed witnesses at hearing. In addition, Complainant reserves the right to expand, or otherwise modify the scope, extent, and areas of testimony of any of these witnesses where appropriate. Such changes may be occasioned by the discovery of new evidence or witnesses, the unavailability of one or more witnesses, prehearing stipulations of fact between the parties, rulings on motions, or any other legitimate purpose.

II. Exhibits to be Introduced into Evidence

Complainant's Exhibit 1:

Pesticides and Toxics Enforcement Section Inspection Report for Section 1018 of the Residential Lead-Based Paint hazard Reduction Act of 1992, file number 05TL660 with attachments (Inspection conducted on July 26, 2005 and Inspection Report dated November 4, 2005):

A. Notice of Inspection,

B. TSCA Inspection Confidentiality Notice

C. Facsimile Transmittal cover sheet dated August 24, 2005, including:

(1) 3957 N. Ashland Lead Paint Disclosure dated July 25, 2005 and signed by M. Anwar Shariff, Shariff Management

(2) Mitigation Notice Letter dated April 23, 2004 to 3957 Ashland – 202-A from Anthony Amato Supervisor of Inspectors, City of Chicago Department of Public Health

(3) Lead Hazard Classification for 3957 N. Ashland – 202-A

(4) Chicago Department of Public Health Drawing Form for 3957 N. Ashland Avenue, 202A

(5) Chicago Department of Public Health Lead Poison Inspection Report for 3957 N. Ashland, 202 A, 4/15/04 to 6/29/04

(6) Chicago Department of Public Health form verifying that M. Anwar Shariff attended the Chicago Department of Public Health Lead Mitigation Workshop, dated 5/19/04

(7) Illinois Department of Public Health Division of Laboratories, Environmental Lead Analysis Report dated 06/15/04

(8) Chicago Department of Public Health Certificate of Compliance for 3957 N. Ashland, 202A to Mr. Shariff from Richard Duslak, Building Inspector Environmental Lead Program

D. Includes Rent Roll and Chicago Apartment Leases:

(1) Rent Roll - List of Stores and Apartments for 3957 N. Ashland Avenue, titled "rent-2005.xls" that also identifies the studio apartments.

(2) Chicago Apartment Lease for Apartment No. 202A, 3957 N. Ashland, Chicago, IL 60613, February 21, 2005

(3) Chicago Apartment Lease for Apartment No. 202B, 3957 N. Ashland, Chicago, IL 60613, April 13, 2005

(4) Chicago Apartment Lease for Apartment No. 203 3957 N. Ashland, Chicago, IL 60613, February 22, 2005 (signed February 24, 2005)

(5) Chicago Apartment Lease for Apartment No. 306, 3957 N. Ashland, Chicago, IL 60613, April 1, 2005

(6) Chicago Apartment Lease for Apartment No. 310, 3957 N. Ashland, Chicago, IL 60613, August 15, 2004

E. Receipt for Documents, July 26, 2005, to Shariff Management from Inspector Pamela Grace

F. Signed "Disclosures of Information on Lead-Based Paint and/or Lead-Based Paint Hazards" forms:

(1) Apartment 202A, August 10, 2005;



- (2) Apartment 202, August 9, 2005;
- (3) Apartment 202B, August 1, 2005;
- (4) Apartment 306, August 1, 2005;
- (5) Apartment 203, August 1, 2005;
- (6) Apartment 307, August 1, 2005;
- (7) Apartment 309, August 1, 2005;
- (8) Apartment 310, August 1, 2005;
- (9) Disclosure form only signed by M. Anwar Shariff

G. Record of Telephone Discussion between Edward Pilny and Ms. Habeeba Shariff and Mr. (Habeeba) Shariff on July 19, 2005, 2 pages

- Complainant's Exhibit 2: U.S. EPA Region 5 1018 Inspection Questions and record of answers (Inspection conducted on July 26, 2005)
- Complainant's Exhibit 3: Cook County Assessor's Office Parcel Mapping Application, Property Details, 3959 N. Ashland Avenue, Chicago, PIN 14-20-100-001-0000 (Search results), February 6, 2009
- Complainant's Exhibit 4: Cook County Assessor's Office Property Search Results, 3959 N. Ashland Avenue, Chicago, PIN 14-20-100-001-0000, February 6, 2009
- Complainant's Exhibit 5: Cook County Assessor's Office Parcel Mapping, aerial view of building at corner of Irving Park Road and Ashland Avenue, Chicago, Illinois (3957 Ashland Avenue, Chicago, Illinois) (Search results), August 24, 2007
- Complainant's Exhibit 6: Copy of the Notice of Intent to file Civil Administrative Action against Habeeba Shariff, dated November 27, 2007, with copies of two returned envelope covers and certified mail card.
- Complainant's Exhibit 7: Copy of the Notice of Intent to file Civil Administrative Action against Habeeba Shariff, dated December 12, 2007, with copy of returned envelope cover, certified mail card,

- FedEx US Airbill, and FedEx delivery information form
- Complainant's Exhibit 8: Copy of the Notice of Intent to file Civil Administrative Action against Habeeba Shariff, dated January 14, 2008, with copy of FedEx U.S. Airbill (Sender's copy), FedEx return envelope, and FedEx U.S. Airbill (Addressee's copy)
- Complainant's Exhibit 9: Copy of the Notice of Intent to file Civil Administrative Action against M. Anwar Shariff, dated November 27, 2007 with copy of certified mail receipt and card
- Complainant's Exhibit 10: Penalty Calculation Memo prepared by Estrella Calvo proposing the penalty for Respondents' violations of the Lead Disclosure Rule
- Complainant's Exhibit 11: Penalty Worksheet
- Complainant's Exhibit 12: U.S. EPA Section 1018 – Disclosure Rule Enforcement Response Policy (Penalty Policy)
- Complainant's Exhibit 13: Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy
- Complainant's Exhibit 14: Memorandum – Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustments Rule, dated June 5, 2006, from Stephanie P. Brown, Acting Director, Toxics and Pesticides Enforcement Division, Office of Civil Enforcement, U.S. EPA to Regional Counsels and TSCA, FIFRA, and EPCRA Division Directors
- Complainant's Exhibit 15: U. S. EPA Lead Based Paint Disclosure Form for Lessors
- Complainant's Exhibit 16: Personal Qualification Statement of Dr. Chris Weis
- Complainant's Exhibit 17: Bibliography of Dr. Chris Weis

Copies of complainant's exhibits are attached to the Prehearing Exchange.

Complainant respectfully reserves the right to supplement its prehearing exchange with additional exhibits prior to the adjudicatory hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondent and the Presiding Officer.

### Judicial Notice

Complainant hereby requests that the Presiding Officer take judicial notice of the following:

1. The Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.*, and its implementing regulations;
2. The Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-56, including the legislative history, and its implementing regulations; and
3. 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, as amended.

### III. Desired or Required Location of the Hearing and Estimated Time to Present Direct Case

The Consolidated Rules provide that the hearing shall be held in the county where the respondent resides or conducts the business which the hearing concerns; in the city in which the relevant EPA Regional Office is located; or in Washington DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone. 40 C.F.R. §§ 22.19(d) and 22.21(d). On information and belief, respondent Habeeba Shariff resides in the Chicago area and conducts business in the City of Chicago. On information and belief, Respondent M. Anwar Shariff resides in Eden Prairie, Minnesota, but previously conducted business in Chicago. The EPA Regional office is located in Chicago. The housing that the hearing concerns is located in the city of Chicago and the majority of potential witnesses work or reside in the Chicago area. In light of the above facts Complainant requests that the hearing be held in Chicago, Illinois.

It is estimated that the amount of time needed for Complainant to present its direct case is two days.

#### IV. Explanation of Proposed Penalty

Under 40 C.F.R. § 22.19(a)(3), U.S. EPA must explain in its prehearing exchange how it calculated the proposed penalty in accordance with the criteria set forth in TSCA.

Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5) (“Section 1018”), authorizes the imposition of a civil penalty of up to \$10,000 for each violation of a requirement of Section 1018 and its implementing regulations at 40 C.F.R. Part 745, Subpart F (*i.e.*, the Disclosure Rule), under Section 16 of TSCA, 15 U.S.C. § 2615. The Civil Monetary Penalty Inflation Adjustment Act and its implementing regulations increased this maximum penalty amount to \$11,000 per violation for violations that occur after January 30, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19 (2004).

Complainant relied on the “Section 1018 - Disclosure Rule Enforcement Response Policy,” dated February 2000 (“Penalty Policy”) (Complainant’s Exhibit-12), in its calculation of the proposed penalty in this matter. The Penalty Policy is based on the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which are the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. The Penalty Policy was developed under the general framework established by the “Guidelines for the Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy,” 45 Fed. Reg. 59770 (September 10, 1980) (TSCA Civil Penalty Guidelines) (Complainant’s Exhibit-13). The Penalty Policy was modified on June 5, 2006 to adjust for the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27. (*See* Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule, dated

June 5, 2006, Complainant's Exhibit 14). Due to the 2006 modification, all violations of the Disclosure Rule occurring after March 14, 2004 are subject to statutory penalties adjusted for inflation.<sup>2</sup>

Under the Penalty Policy, U.S. EPA determines penalties in two stages: 1) the determination of a "gravity-based penalty," and 2) adjustments to the gravity-based penalty. U.S. EPA calculates the gravity-based penalty by considering: 1) the nature of the violations; 2) the circumstances of the violations; and 3) the extent of harm that may result from the violations. Complainant's exhibit 12 at 9.

The TSCA Civil Penalty Guidelines discuss the nature of the violation as the essential character of the violation and incorporate the concept of whether the violation is of a chemical control, control associated data gathering, or hazard assessment in nature. Complainant's Exhibit - 13 at 59771. The Penalty Policy categorizes all Disclosure Rule violations as "hazard assessment" in nature, since the information is vital to purchasers and lessees in weighing the risks in purchasing or leasing target housing. This information is particularly vital to purchasers or lessees who are pregnant or have young children, who may be put at risk when residing in target housing. Complainant's Exhibit-12 at 9.

The "circumstances" reflect the probability of harm resulting from a particular type of violation. The Penalty Policy categorizes each possible violation of the Disclosure Rule in one of six circumstance levels, based on the nature and circumstances surrounding each type of violation, and reflecting the probability of harm from each. The levels range from Level 1, the most serious, to Level 6, the least serious. *Id.* at 10, B-1 through B-3.

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<sup>2</sup> The statutory civil monetary penalties that may be assessed for violations of EPA-administered statutes and their implementing regulations were again adjusted for inflation for violations that occur after January 12, 2009. 73 FR

The “extent” factor considers the degree, range or scope of a violation. When assessing penalties for violations of the Disclosure Rule, the extent factor is based on two measurable facts: 1) the age of any children living in the target housing; and 2) whether a pregnant woman lives in the target housing. *Id.* at 10-11. The Penalty Policy categorizes the extent of a violation as major, significant or minor, through the use of an “Extent Category Matrix.” *Id.* at B-4 through B-4-A.

Based on the date of the occurrence of the violation, the Penalty Policy requires that the circumstance and extent factors be input into one of two Gravity-Based Penalty Matrices. Each matrix lists varying penalty amounts in 18 cells, ranging in value from \$110 to \$11,000 for violations occurring prior to March 15, 2004, and from \$129 to \$11,000 for violations occurring on or after March 15, 2004. The violations in this matter are all subject to the range of \$129 to \$11,000. *Id.* at B-4 through B-4-A. The appropriate cell is determined according to the circumstance level, and extent category involved.

Once the gravity-based penalty is determined for a given violation, U.S. EPA applies upward or downward adjustments to the penalty in consideration of the following factors with respect to the violator: 1) ability to pay/ability to continue in business; 2) history of prior violations; 3) degree of culpability; and 4) such other factors as justice may require, which include: no known risk of exposure, the violator’s attitude, consideration of supplemental environmental projects, audit policy, voluntary disclosure, size of business, adjustment for small independent owners and lessors, and the economic benefit of noncompliance. *Id.* at 14-18.

By letter dated November 27, 2007, U.S. EPA advised Respondent M. Anwar Shariff that it was planning to file a civil administrative complaint against Respondent for alleged violations of

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75340-75346 (December 11, 2008). This latest adjustment does not apply to this matter.

Section 1018, and that Section 1018 authorizes the assessment of a civil administrative penalty. Complainant's Exhibit 9. By letters dated November 27, 2007, December 12, 2007 and January 14, 2008 U.S. EPA attempted to notify Respondent Habeeba Shariff that it was planning to file a civil administrative complaint against Respondent for alleged violations of Section 1018, and that Section 1018 authorizes the assessment of a civil administrative penalty. Two of these letters were returned to U.S. EPA stating correspondent not known (Nov. 27, 2007) and unclaimed (Dec. 12, 2007). One letter was returned by FedEx as not delivered (Jan. 14, 2008). A copy of the Nov. 12, 2008 letter was delivered by FedEx, but a signature was not obtained. Complainants' Exhibits 7-9. U.S. EPA asked Respondent, M. Anwar Shariff to identify any factors Respondent thought U.S. EPA should consider before issuing the complaint. U.S. EPA also asked that, if Respondent believed there were financial factors that bore on Respondent's ability to pay a civil penalty that Respondent complete the enclosed Individual Ability to Pay Form and return it to U.S.EPA along with certified complete financial statements including balance sheets, income statements and all notes to the financial statements and signed income tax returns with all schedules and amendments, for the past three years. The Respondents didn't submit specific financial documents before the Complaint was filed in this matter. However, the Respondents submitted to U.S. EPA certain financial information on January 13, 2009 that is currently being reviewed.

**A. Gravity-Based Penalty**

**1. Extent**

**a. Counts 5, 10, 15, and 20.**

In accordance with the Extent Category Matrix, four violations fell into the significant category as opposed to the major category because, although children were identified by

Mr. Shariff as tenants in two of the Property's units and one of the children lived in one of the apartments at issue in this matter, the document does not state the child's age. *See* Complainant's Exhibit 2. U.S. EPA conservatively assumed the child was older than six.

**b. Counts 1-4, 6-9, 11-14, 16-19, and 21**

In accordance with the Extent Category Matrix, 17 violations fell into the minor category because there were no children under 18 years of age residing in the properties at the time of the violations. Complainant's Exhibit 12 at B-4 through B-5.

**2. Circumstances**

**a. Count 1 (Failure to Include Lead Warning Statement).**

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, the Lead Warning Statement before a lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.113(b)(1) and 40 C.F.R. § 745.100 is a Level 2 violation. *Id.* at B-1. Respondent failed to include, within or as an attachment to one contract to lease target housing, the Lead Warning Statement before the lessee was obligated under the August 15, 2004 contract in the leasing transaction at 3957 Ashland Avenue, Chicago, Illinois, Apartment 310 (Count 1). The penalty for a Level 2 circumstance, minor extent violation occurring on or after March 15, 2004 is \$1,547 under the Gravity-Based Penalty Matrix, *id.* at B-4-A. Therefore, U.S. EPA calculated a proposed gravity-based penalty for Count 1 of \$1,547. *See* Complainant's Exhibit 11 for the worksheet prepared by U.S. EPA to calculate the penalty for these counts.

**b. Counts 2 - 6 (Failure to Include Statement Disclosing Presence or Lack of Knowledge of Lead-Based Paint)**



Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in target housing or lack of knowledge of such presence before the lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.100 is a Level 3 violation. *Id.* at B-1. Respondent failed to include, within or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in target housing or lack of knowledge of such presence before the lessee became obligated under the contract in five leasing transactions for the following apartments at 3957 N. Ashland Avenue, Chicago, Illinois: 202A, February 21, 2005 (Count 2); 202B, April 13, 2005 (Count 3); 203, February 24, 2005 (Count 4); 306, April 1, 2005 (Count 5); and 310, August 15, 2004 (Count 6). The penalty for a Level 3 Circumstance, for significant and minor extent violations occurring on or after March 15, 2004 is \$5,158 and \$774, respectively, under the Gravity-Based Penalty Matrix, *id.* at B-4-A; therefore, U.S. EPA calculated a proposed gravity-based penalty for Counts 2-6 of \$8254. *See* Complainant's Exhibit 11 for the worksheet prepared by U.S. EPA to calculate the penalty for these counts.

**c. Counts 7 - 11 (Failure to List Records or Reports)**

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead based paint hazards in the target housing or a statement that no such records exist before a lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.113(b)(3) and 40 C.F.R. § 745.100 is a Level 5 violation. *Id.* at B-2. Respondent failed to include, within or as an attachment to each contract to lease target housing, a list of any

records or reports available to Respondent regarding lead-based paint and/or lead based paint hazards in the target housing or a statement that no such records existed before the lessee was obligated under the contract in five leasing transactions for the following apartments at 3957 N. Ashland Avenue, Chicago, Illinois: 202A, February 21, 2005 (Count 7); 202B, April 13, 2005 (Count 8); 203, February 24, 2005 (Count 9); 306, April 1, 2005 (Count 10); and 310, August 15, 2004 (Count 11). The penalty for a Level 5 circumstance, significant and minor extent violation occurring on or after March 15, 2004 is \$1,676, and \$258, respectively, under the Gravity-Based Penalty Matrix, *id.* at B-4-A. Therefore, U.S. EPA calculated a proposed gravity-based penalty for Counts 7-11 of \$2708. *See* Complainant's Exhibit 11 for the worksheet prepared by U.S. EPA to calculate the penalty for these counts.

**d. Counts 12 - 16 (Failure to Include Lessee's Affirmation of Receipt)**

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet before a lessee is obligated under the contract to lease target housing as required by 40 C.F.R. § 745.114(b)(4) and 40 C.F.R. § 745.100 is a Level 4 violation. *Id.* at B-2. Respondent failed to include, within or as an attachment to each contract, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet before the lessee was obligated under the contract in five leasing transactions for the following apartments at 3957 N. Ashland Avenue, Chicago, Illinois: 202A, February 21, 2005 (Count 12); 202B, April 13, 2005 (Count 13); 203, February 24, 2005 (Count 14); 306, April 1, 2005 (Count 15); and 310, August 15, 2004 (Count 16). The penalty for a Level 4 circumstance, significant and minor extent violation

occurring on or after March 15, 2004 is \$3,224, and \$516, respectively, under the Gravity-Based Penalty Matrix, *id.* at B-4-A. Therefore, U.S. EPA calculated a proposed gravity-based penalty for Counts 12-16 of \$5,288. *See* Complainant's Exhibit 11 for the worksheet prepared by U.S. EPA to calculate the penalty for these counts.

**e. Counts 17 - 21 (Failure to Include Certifying Signatures)**

Under Appendix B of the Penalty Policy, the failure to include, within or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before the lessee is obligated under a contract to lease target housing as required by 40 C.F.R. § 745.113(b)(6) and 40 C.F.R. § 745.100 is a Level 6 violation. *Id.* at B-3. Respondent failed to include, within or as an attachment to each contract to lease target housing, the signatures of Respondent and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of such signature before the lessee was obligated under the contract in five leasing transactions for the following apartments at 3957 N. Ashland Avenue, Chicago, Illinois: 202A, February 21, 2005 (Count 17); 202B, April 13, 2005 (Count 18); 203, February 24, 2005 (Count 19); 306, April 1, 2005 (Count 20); and 310, August 15, 2004 (Count 21). The penalties for a Level 6 circumstance, significant and minor extent violation occurring on or after March 15, 2004 is \$645, and \$129, respectively, under the Gravity-Based Penalty Matrix, *id.* at B-4-A. Therefore, U.S. EPA calculated a proposed gravity-based penalty for Counts 17-21 of \$1,161. *See* Complainant's Exhibit 11 for the worksheet prepared by U.S. EPA to calculate the penalty for these counts.

**3. Total Initial Gravity-Based Penalty**

U.S. EPA calculated the total initial gravity-based penalty adding together the subtotal gravity-based penalties for the 21 counts. The initial gravity-based penalty is \$18,958.

**B. Statutory Adjustment Factors**

**1. Ability to Pay/Continue in Business**

As noted above (page 14), on November 27, 2007, U.S. EPA issued a prefiling notice letter to Respondent M. Anwar Shariff informing Respondent that U.S. EPA was prepared to file a civil administrative penalty complaint against him for alleged violations of the Section 1018 requirements. Complainant's Exhibit 9. The prefiling notice letter also extended an opportunity to Respondent, M. Anwar Shariff to advise U.S. EPA of any factors that he believed U.S. EPA should consider before filing a complaint. The prefiling notice letter specifically asked Respondent to provide financial information if Respondent believed he would have an inability to pay a penalty. Complainant's Exhibit 9. As also noted above (page 14), the three prefiling notice letters sent to Habeeba Shariff were returned to U.S. EPA, except for a copy of one which was delivered by FedEx, but for which a signature was not obtained. *See* Complainant's Exhibits 6-8. U.S. EPA did not receive a response to the prefiling notice letter sent to either of the Respondents.

As a result of the settlement conference on December 23, 2008, M. Anwar Shariff, on behalf of both Respondents, provided U.S. EPA with certain financial information for the years 2005, 2006, and 2007. U.S. EPA is in the process of reviewing this information.

**2. History of Prior Such Violations**

U.S. EPA does not believe Respondent has a history of prior violations of Section 1018. U.S. EPA did not increase the initial gravity-based penalty for a history of prior such violations.

**3. Degree of Culpability**

The Penalty Policy provides for a 25 percent increase in penalty for an intentional violation of Section 1018, or a violation where the violator has previously received a Notice of Noncompliance (NON) for Section 1018 or Disclosure Rule violations. Complainant's Exhibit, 12 at 15. U.S. EPA has no information that Respondent's violations were intentional or that Respondent had previously received a NON. U.S. EPA has not increased the initial gravity-based penalty for culpability.

**4. Other Factors as Justice May Require**

**a. No Known Risk of Exposure**

Under the Penalty Policy, U.S. EPA will adjust a proposed penalty down 80 percent if the Respondent provides U.S. EPA with appropriate documentation that the target housing is certified to be lead-based paint free by a certified inspector. *Id.* at 16. Respondent has not provided any documentation to certify that the properties at issue in this matter are certified lead-based paint free. U.S. EPA did not adjust the penalty downward based on no known risk of exposure.

**b. Attitude**

Under the Penalty Policy, U.S. EPA may reduce the proposed penalty by up to 30 percent based on a Respondent's cooperation, immediate good faith efforts to comply, and timely efforts to settle the case. *Id.* at 16. U.S. EPA does not believe a reduction of the proposed penalty is appropriate at this time and, therefore, has not adjusted the initial gravity-based penalty downward.

**c. Supplemental Environmental Projects (SEPs)**

Respondent has not agreed to perform a SEP.

**d. Audit Policy**

Respondent did not disclose its violations of Section 1018 under U.S. EPA's Audit Policy, "Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations," 60 Fed. Reg. 66706 (December 22, 1995); therefore, U.S. EPA made no adjustment to the initial gravity-based penalty based on this factor.

**e. Voluntary Disclosure**

The Penalty Policy provides that a violator, who self-discloses a violation of Section 1018, but not under the Audit Policy, may still receive a reduction in penalty for such a voluntary disclosure. Complainant's Exhibit 12 at 17. Respondent did not disclose its violations of Section 1018; therefore, U.S. EPA made no adjustment to the initial gravity-based penalty based on this factor.

**f. Size of Business**

A violator may request assistance under the U.S. EPA's *Policy on Compliance Incentives for Small Businesses* (Small Business Policy). The Small Business Policy provides for the elimination of penalties if a small business meets its four qualifying criteria and agrees to participate in the compliance assistance program or conducts a voluntary self-audit. Respondent has not sought assistance under the Small Business Policy. Therefore, U.S. EPA made no adjustment to the proposed penalty based on this factor.

**g. Adjustment for Small Independent Owners and Lessors**

Under the Penalty Policy, U.S. EPA will adjust a penalty down by 50 percent for individuals who own one target housing unit for lease or one target housing unit that is "for sale by owner." *Id.* at 18. Respondent Habeeba Shariff is the owner of the apartment building at 3957 Ashland Avenue, Chicago, Illinois with approximately nine target housing units in Chicago, Illinois, and is cited in

the complaint for violations involving five separate target housing units. Accordingly, U.S. EPA made no adjustment to the initial gravity-based penalty based on this factor. Complainant's Exhibits 1 and 2.

**h. Economic Benefit of Noncompliance**

U.S. EPA believes the proposed penalty captures any economic benefit to Respondent from its noncompliance with section 1018.

**C. Total Proposed Penalty**

In summary, U.S. EPA did not increase or decrease the initial gravity-based penalty based on any of the statutory adjustment factors. U.S. EPA proposed an \$18,958 penalty in the Complaint.

**V. Paperwork Reduction Act**

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. §§ 3501 et seq., applies to this proceeding. The Office of Management and Budget (OMB) control number for The Residential Lead-Based Paint Hazard Disclosure Requirements (Renewal), 40 C.F.R., Subpart F, §§745.100 to 745.119 is 2070-0151. 40 C.F.R. §9.1. The current expiration date for this Information Collection Request (ICR) is March 31, 2011. The ICR was properly approved for provisions 40 C.F.R., Subpart F, §§745.100 to 745.119 during the specified time period for the alleged violations, 2004 to 2005. OMB approved this ICR on 7/3/2001 with an expiration date of 7/31/2004 with notice in the Federal Register on 09/28/2001 at 66 FR 2004. Since EPA sent its renewal package to OMB on July 26, 2004 for review prior to the expiration date by OMB regulation (5 CFR 1320.10(e) (2)), it cannot expire until OMB takes action. Therefore, OMB automatically extended the expiration date from 04/31/2004 to 11/30/2004 so there were no lapses

in approval. OMB took action by approving the renewal on 11/05/2004 with a new expiration date of 11/30/2007 with notice in the Federal Register on 11/30/2004 at 69FR 69598. Therefore the provisions of Section 3512 of the PRA are not applicable in this case.

Respectfully submitted,

U.S. Environmental Protection Agency



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In the Matter of *Habeeba Shariff, Chicago and/or Skokie, Illinois and M. Anwar Shariff, Chicago, Illinois and/or Eden Prairie, Minnesota*, Respondents.

Docket No. TSCA-05-2008-0007

**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of the foregoing Complainant's Initial Prehearing Exchange was filed on February 20, 2009 with the Regional Hearing Clerk (E-13J) U.S. EPA-Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true and correct copy was sent on the same day in the following manner to the addressees listed below.

Copy by Regular Mail to:

M. Anwar Shariff  
18281 Coneflower Lane  
Eden Prairie, MN 55346

Habeeba Shariff  
5145 W. Elm Street  
Skokie, IL 60077-2117

Copy by Pouch Mail to:

Judge Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460



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