



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

April 13, 2010

REPLY TO THE ATTENTION OF
E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: Kenneth J. Kosmoski and Kristin Gillan
Docket No.: TSCA-05-2010-0006
Complaint Date: March 8, 2010
Total Proposed Penalty: \$27,090.00

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answers to an Administrative Complaint and Request for Hearing for Kenneth J. Kosmoski and Kristin Gillan, Shorewood, Wisconsin.

Please assign an Administrative Law Judge to conduct this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in black ink, appearing to read "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Lisa C. Paul
Attorney At Law
309 North Water Street, Suite 160
Milwaukee, Wisconsin 53202
(414) 378-6895

Elizabeth Gamsky Rich
Elizabeth Gamsky Rich & Associates SC
637 Walton Drive, Suite 1
Plymouth, Wisconsin 53073
(920) 892-2449

Ann Coyle
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
Chicago, Illinois 60604-3590
(312) 886-2248



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PROTECTION AGENCY**

April 9, 2010

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd
Chicago, IL 60604

Re: In the Matter of Kenneth J. Kosmoski and Kristin Gillan
Docket No. TSCA-05-2010-0006

Dear Clerk:

This firm represents Kristin Gillan in the above-referenced matter. I have enclosed for filing the original and one copy of Ms. Gillan's answer to the Complaint.

Very truly yours,

ELIZABETH GAMSKY RICH & ASSOCIATES SC

Elizabeth A. Rich

Elizabeth Gamsky Rich

Cc: Attorney Ann Coyle
Attorney Lisa Paul

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Kenneth Kosmoski and
Kristin Gillan
Shorewood, Wisconsin

Respondents.

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PROTECTION AGENCY

Docket No. TSCA-05-2010-0006

Proceeding to Assess a Civil
Penalty under Section 16(a)
of the Toxic Substances Control
Act, 15 USC §2615(a)

ANSWER

Respondent Kristin Gillan, by her attorneys, Elizabeth Gamsky Rich & Associates, SC, responds to the Complaint as follows, with the numbered paragraphs below corresponding to the numbered paragraphs in the Complaint:

1. Paragraph 1 does not contain factual allegations that need be admitted or denied.
2. Insufficient information to admit or deny.
3. Admit that Respondent Kristin Gillan resides in the State of Wisconsin; denies that she is "doing business" in the State of Wisconsin.
4. Paragraph 4 does not contain factual allegations that need be admitted or denied.
5. Paragraph 5 does not contain factual allegations that need be admitted or denied.
6. Paragraph 6 does not contain factual allegations that need be admitted or denied.
7. Paragraph 7 does not contain factual allegations that need be admitted or denied.
8. Paragraph 8 does not contain factual allegations that need be admitted or denied.
9. Paragraph 9 does not contain factual allegations that need be admitted or denied.
10. Paragraph 10 does not contain factual allegations that need be admitted or denied.
11. Paragraph 11 does not contain factual allegations that need be admitted or denied.

12. Paragraph 12 does not contain factual allegations that need be admitted or denied; affirmatively allege that penalties may be assessed only for knowing violations.
13. Paragraph 13 does not contain factual allegations that need be admitted or denied; affirmatively allege that penalties may be assessed only for knowing violations.
14. Paragraph 14 does not contain factual allegations that need be admitted or denied.
15. Admit that Respondent Gillan and her former husband, Kenneth Kosmoski, owned a residential dwelling consisting of two dwelling units, at 1709-1711 East Marion Street, Shorewood, Wisconsin, as survivorship marital property, from 1983 until the property was transferred to Mr. Kosmoski on February 26, 2009.
16. Upon information and belief, deny and affirmatively allege that the property was constructed in 1926.
17. Paragraph 17 does not contain factual allegations that need be admitted or denied.
18. Admit.
19. Admit.
20. Insufficient information to admit or deny and therefore deny. Object to the allegation in that it is vague and incapable of response. Further affirmatively allege that the Complaint does not identify the lessees upon which the Complaint is based, making defense of the allegations difficult if not impossible.
21. Insufficient information to admit or deny and therefore deny. Re-allege and incorporate the allegations set forth in Paragraph 20, above.
22. Insufficient information to admit or deny and therefore deny. Re-allege and incorporate the allegations set forth in Paragraph 20, above.

23. Insufficient information to admit or deny and therefore deny. Re-allege and incorporate the allegations set forth in Paragraph 20, above.
24. Paragraph 24 does not contain factual allegations that need be admitted or denied.
25. Paragraph 25 does not contain factual allegations that need be admitted or denied.
26. Admit that the EPA sent a letter to Respondent Gillan dated October 14, 2009. The letter speaks for itself.
27. Insufficient information to admit or deny any allegation related to Respondent Kosmoski. Admit that Respondent Gillan received the pre-filing notice letter on or about October 17, 2009.
28. Insufficient information to admit or deny and therefore deny.
29. Insufficient information to admit or deny and therefore deny.
30. Insufficient information to admit or deny and therefore deny.
31. Insufficient information to admit or deny and therefore deny.
32. Insufficient information to admit or deny and therefore deny.
33. Admit that Respondent Gillan was provided with a hard copy of an electronic mail transmission from Attorney Carol Krigbaum dated December 21, 2010. The email speaks for itself.
34. Insufficient information to admit or deny and therefore deny.
35. Deny that the fair market value of the property is approximately \$305,000. Admit that Respondent Gillan transferred her interest to Respondent Kosmoski by quit claim deed. Insufficient information to admit or deny the remaining allegations and therefore deny.

36. Admit that as of the date the Complaint was filed, Respondent Gillan had not provided financial disclosures to Complainant. Insufficient information to admit or deny the remaining allegations and therefore deny.

37. Paragraph 37 does not contain factual allegations that need be admitted or denied. Re-allege and incorporate the allegations set forth in Paragraph 20, above.

38. Paragraph 38 does not contain factual allegations that need be admitted or denied.

39. Insufficient information to admit or deny and therefore deny.

40. Paragraph 40 does not contain factual allegations that need be admitted or denied.

41. Paragraph 41 does not contain factual allegations that need be admitted or denied. Re-allege and incorporate the allegations set forth in Paragraph 20, above.

42. Paragraph 42 does not contain factual allegations that need be admitted or denied.

43. Insufficient information to admit or deny and therefore deny.

44. Paragraph 44 does not contain factual allegations that need be admitted or denied.

45. Paragraph 45 does not contain factual allegations that need be admitted or denied. Re-allege and incorporate the allegations set forth in Paragraph 20, above.

46. Paragraph 46 does not contain factual allegations that need be admitted or denied.

47. Insufficient information to admit or deny and therefore deny.

48. Insufficient information to admit or deny and therefore deny.

49. Paragraph 49 does not contain factual allegations that need be admitted or denied.

Re-allege and incorporate the allegations set forth in Paragraph 20, above.

50. Paragraph 50 does not contain factual allegations that need be admitted or denied.

51. Insufficient information to admit or deny and therefore deny.

52. Paragraph 52 does not contain factual allegations that need be admitted or denied.

53. Paragraph 53 does not contain factual allegations that need be admitted or denied.

Re-allege and incorporate the allegations set forth in Paragraph 20, above.

54. Paragraph 54 does not contain factual allegations that need be admitted or denied.

55. Insufficient information to admit or deny and therefore deny.

56. Paragraph 56 does not contain factual allegations that need be admitted or denied.

57. Paragraph 57 does not contain factual allegations that need be admitted or denied.

Affirmatively allege that even taking all of the allegations in the Complaint as true, the proposed penalty is excessive, unfair, and wholly disproportionate to penalties assessed by Complainant in the past. Further affirmatively allege that the proposed penalty does not comply with applicable law, EPA guidance documents and policies, and EPA practice.

58. Paragraph 58 does not contain factual allegations that need be admitted or denied.

Affirmatively allege that:

(i) Respondent Gillan had no role in entering into any lease agreement for the property.

(ii) Respondent Gillan owns no rental units nor any real estate of any kind.

(iii) Respondent Gillan has no history of any violations of law.

(iv) Respondent Gillan was at all times during her co-ownership of the property engaged in full-time employment outside of the home. Respondent Kosmoski was responsible for maintenance, repair and leasing of the single rental unit in their home.

(v) Respondents' only son was raised from infancy in the lower unit of the property.

Respondents would never have knowingly exposed their son or anyone else to any kind of danger, including dangers relating to lead paint.

(vi) Respondent Gillan is a hard-working, middle class single parent of a college student. The proposed penalty is unduly harsh and unjust given the foregoing circumstances. Providing the financial disclosures requested by Complainant would be futile because the penalty calculation procedures themselves are inherently unjust.

59. Paragraph 59 does not contain factual allegations that need be admitted or denied.

Affirmatively allege that:

(i) The Complaint does not identify the lessees upon which the Complaint is based, making defense of the allegations difficult if not impossible. Upon information and belief, however, the lessees in question upon vacating Respondent Kosmoski's property immediately took up residence in a 1925-vintage Shorewood duplex very similar to the property at issue in the Complaint. The conduct of these individuals proves that the alleged violations did not impair the ability of these lessees to assess information regarding hazards associated with lead-based paint, and did not preclude the lessees from making an informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards.

60. Complainant incorrectly alleges that "Respondents have assets of at least \$305,100 and rental or other income from property of at least \$10,800." The named assets are the sole property of Respondent Kosmoski. Further, due to the collapse of the housing market the true value of the property is far below the amount shown on the tax bill.

AFFIRMATIVE DEFENSES

1. Respondent Kosmoski has alleged that all required disclosures were made to these tenants.

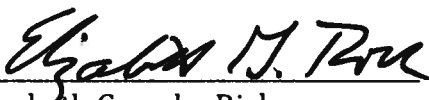
2. The only evidence that required disclosures were not made is self-serving evidence provided by the former tenants, who have a financial interest in an adverse ruling being entered against the Respondents.
3. The Complaint is constitutionally deficient in that the former tenants are not named, and Respondents have been denied their rights under the Sixth Amendment to the United States Constitution.

WHEREFORE, Respondent Gillan respectfully requests that the Complaint against Respondent Gillan be dismissed without the imposition of any fine or penalty.

RESPONDANT GILLAN FURTHER REQUESTS A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE.

Dated this 8th day of April, 2010.

ELIZABETH GAMSKY RICH & ASSOCIATES, SC,
Attorneys for Respondent Gillan

By: 
Elizabeth Gamsky Rich
Wisconsin State Bar No. 1019123

P.O. Address:
637 Walton Drive, Suite 1
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LISA C. PAUL, LLC
ATTORNEY AT LAW

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lisapaul@herlawfirm.com

April 2, 2010

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Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Re: In the Matter of Kenneth J. Kosmoski and Kristin Gillan
Docket No. TSCA-05-2010-0006

Dear Regional Hearing Clerk:

This firm represents the Respondent Kenneth J. Kosmoski in the above-referenced matter. Please serve all papers and communications to Attorney Lisa C. Paul at the above address.

I have enclosed for filing the original and one copy of Mr. Kosmoski's Answer to the Complaint and Request for Hearing.

Please contact me if you have any questions.

Very truly yours,

Lisa C. Paul

c: Atty. Elizabeth G. Rich
Mr. Kenneth J. Kosmoski

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Kenneth Kosmoski and Kristin Gillan)
Shorewood, Wisconsin)

Respondents)

RECEIVED
APR 05 2010

) Docket No. TSCA-05-2010-0006

) Proceeding to Assess a Civil Penalty
) Under Section 16(a) of the Toxic
) Substances Control Act
) 15 U.S.C. 2615(a)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY,

**RESPONDENT KENNETH KOSMOSKI'S ANSWER TO COMPLAINT AND
REQUEST FOR HEARING**

NOW COMES the Respondent Kenneth Kosmoski, by his attorney Lisa C. Paul LLC and as and for an answer to the Complaint admits, denies, and affirmatively alleges as follows:

Complaint

1. Answering paragraph 1, no allegation is contained in this paragraph; therefore this answering respondent neither admits nor denies same.
2. Answering paragraph 2, this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies same.
3. Answering paragraph 3, admits that respondent Kenneth Kosmoski is an individual in the State of Wisconsin, but lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies same and puts the Complainant to its strict proof thereon.

Statutory and Regulatory Background

4. Answering paragraphs 4-13, no allegations are contained in these paragraphs, rather various provisions under United States Code of Federal Regulations, United States Code and Toxic Control Substance Act are recited to which an admission or denial is not required. To the extent allegations are found to be contained in these paragraphs, this answering respondent denies same and puts the Complainant to its strict proof thereon.

General Allegations

5. Answering paragraph 14, this answering respondent realleges and asserts as if fully set forth herein all of the previous answers, admissions, and denials.

6. Answering paragraph 15, admits.

7. Answering paragraph 16, admits.

8. Answering paragraph 17, this paragraph contains a conclusion of law to which an admission or denial is not required.

9. Answering paragraph 18, admits.

10. Answering paragraph 19, this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies same and puts the Complainant to its strict proof thereon.

11. Answering paragraph 20, admits.

12. Answering paragraph 21, this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies same and puts the Complainant to its strict proof thereon.

13. Answering paragraph 22, denies, and affirmatively alleges that the lease in which the respondents entered into was for a month-to-month term.

14. Answering paragraph 23, this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations, and therefore denies same and puts the Complainant to its strict proof thereon.
15. Answering paragraph 24, this paragraph contains a conclusion of law to which an admission or denial is not required.
16. Answering paragraph 25, this paragraph contains a conclusion of law to which an admission or denial is not required.
17. Answering paragraphs 26-34, this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and puts the Complainant to its strict proof thereon. This answering respondent affirmatively alleges that at all times material hereto he has been unable to pay a penalty of \$27,090 and that said penalty would result in an undue financial hardship upon him.
18. Answering paragraph 35, this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations with respect to the fair market value of his respondents' property; admits he purchased respondent Gillan's interest in the property by quit claim deed on or about March 17, 2009; and denies the remaining allegations in paragraph 35.
19. Answering paragraph 36, this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies same and puts the Complainant to its strict proof thereon. This answering respondent affirmatively alleges that at all times material hereto he has been unable to pay a penalty of \$27,090 and that said penalty would result in an undue financial hardship upon him.

Count 1

20. Answering paragraph 37; this answering respondent realleges and asserts as if fully set forth herein all of the previous answers, admissions, and denials.

21. Answering paragraph 38; no allegations are contained in this paragraph, rather provisions under the United States Code of Federal Regulations are recited to which an admission or answer is not required.

22. Answering paragraph 39; denies.

23. Answering paragraph 40; contains a conclusion of law to which an admission or denial is not required; to the extent an allegation is contained therein, this answering defendant denies and puts the Complainant to its strict proof thereon.

Count 2

24. Answering paragraph 41; this answering respondent realleges and asserts as if fully set forth herein all of the previous answers, admissions, and denials.

25. Answering paragraph 42; no allegations are contained in this paragraph, rather provisions under the United States Code of Federal Regulations are recited to which an admission or answer is not required.

26. Answering paragraph 43; denies.

27. Answering paragraph 44; this paragraph contains a conclusion of law to which an admission or denial is not required; to the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

Count 3

28. Answering paragraph 45; this answering respondent realleges and asserts as if fully set forth herein all of the previous answers, admissions, and denials.

29. Answering paragraph 46; no allegations are contained in this paragraph, rather provisions under the United States Code of Federal Regulations are recited to which an admission or answer is not required. To the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

30. Answering paragraph 47; denies.

31. Answering paragraph 48; this paragraph contains a conclusion of law to which an admission or denial is not required; to the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

Count 4

32. Answering paragraph 49; this answering respondent realleges and asserts as if fully set forth herein all of the previous answers, admissions, and denials.

33. Answering paragraph 50; no allegations are contained in this paragraph, rather provisions under the United States Code of Federal Regulations are recited to which an admission or answer is not required. To the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

34. Answering paragraph 51; denies.

35. Answering paragraph 52; this paragraph contains a conclusion of law to which an admission or denial is not required; to the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

Count 5

36. Answering paragraph 53; this answering respondent realleges and asserts as if fully set forth herein all of the previous answers, admissions, and denials.

37. Answering paragraph 54; no allegations are contained in this paragraph, rather provisions under the United States Code of Federal Regulations are recited to which an admission or answer is not required. To the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

38. Answering paragraph 55; denies.

39. Answering paragraph 56; this paragraph contains a conclusion of law to which an admission or denial is not required; to the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

Proposed Civil Penalty

40. Answering paragraph 57; denies and affirmatively alleges that penalties alleged therein are not justified based on the alleged nature, circumstances, extent and gravity of the violations alleged against this answering defendant. This answering respondent further affirmatively alleges that a) he has not had any prior such violations; b) he lacks the ability to pay the penalties alleged therein and the imposition of such penalties against him would have a adverse effect on his ability to continuing renting his property; and, c) on information and belief, this action against him was based on malicious and retaliatory conduct of the tenants identified in paragraph 20 of this complaint. Moreover, this answering respondent has never had knowledge that lead-based paint exists in the subject property.

41. Answering paragraph 58; no allegations are contained in this paragraph, rather a provision under the TSCA is recited to which an admission or answer is not required. To the extent an allegation is contained therein, this answering defendant denies such allegation and puts the Complainant to its strict proof thereon.

42. Answering paragraph 59; no allegations are contained in this paragraph, rather an EPA enforcement response policy is recited to which an admission or answer is not required. To the extent an allegation is contained therein, this answering denies same.

43. Answering paragraph 60; this answering respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies same and puts the Complainant to its strict proof thereon.

44. To the extent any allegations in the Complaint have not been answered herein, they are hereby specifically denied.

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses, this answering respondent alleges as follows:

1. Realleges and reincorporate all previous paragraphs, allegations and denials of this answer as though fully set forth herein.
2. The bases on which he opposes the proposed penalty include without limitation:
 - a. he has never had knowledge that lead-based paint exists in the subject property;
 - b. he has never had knowledge that any tenant, present or past, has suffered any adverse health problems as a result of occupancy in the subject property or, specifically, suffered from any lead poisoning;
 - c. he has been a long-term resident in the lower unit of the property and has not suffered any health problems as a result of occupancy in the subject property, or, specifically, suffered from any lead poisoning;
 - d. respondent Kristin Gillen had been a long-term resident in the lower unit of the subject property and has not suffered any health problems as a result of

occupancy in the subject property or, specifically, suffered from any lead poisoning;

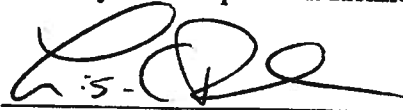
- d. the respondents' adult son was raised in the lower unit of the subject property and has not suffered any health problems as a result of occupancy in the subject property or, specifically, suffered from any lead poisoning;
- e. he has not received any prior violations from the EPA with respect to the subject property;
- f. his pattern and practice as owner of the subject property is and has been to complete the required disclosure activities to a lessee;
- g. he lacks the financial ability to pay the penalties proposed against him and respondent Gillan, and the imposition of such penalties against him would have a adverse effect on his ability to continuing renting his property and result in undue financial hardship upon him;
- h. on information and belief, this action against him was based on malicious and retaliatory conduct of the tenants identified in paragraph 20 of this complaint; and
- i. respondent Gillan was the owner of the property during all relevant times hereto and therefore is liable in the event any penalty is imposed herein.

WHEREFORE, respondent Kenneth J. Kosmoski hereby demands that the Complaint be dismissed, without imposition of any penalty against him, and any other relief the Agency deems just and equitable

Respondent Kenneth J. Kosmoski Hereby Requests a Hearing.

Dated this 2nd day of April, 2009.

LISA C. PAUL LLC
Attorneys for Respondent Kenneth J. Kosmoski



Lisa C. Paul, State Bar No. 1021125

MAILING ADDRESS:

309 N. Water Street, Ste. 160
Milwaukee, WI 53202
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lisapaul@herlawfirm.com

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PROTECTION AGENCY**



LISA C. PAUL, LLC
ATTORNEY AT LAW

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PROTECTION AGENCY**

April 9, 2010

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Re: In the Matter of Kenneth J. Kosmoski and Kristin Gillan
Docket No. TSCA-05-2010-0006

Dear Regional Hearing Clerk:

I inadvertently omitted the enclosed Certificate of Service regarding the Respondent Kenneth Kosmoski's Answer to Complaint and Request for Hearing. Please include it with Mr. Kosmoski's answer.

Very truly yours,

Lisa C. Paul

c: Judicial Officer Marcy A. Toney
Atty. Ann Coyle
Atty. Elizabeth G. Rich
Mr. Kenneth J. Kosmoski

CERTIFICATE OF SERVICE

This is to certify that the original and one copy of RESPONDENT KENNETH KOSMOSKI'S ANSWER TO COMPLAINT AND REQUEST FOR HEARING, In the Matter of Kenneth J. Kosmoski and Kristen Gillan, Docket No. TSCA-05-2010-0006, was served via UPS Overnight Delivery, Tracking No. 1ZF504780198352608, by letter April 2, 2010 on:

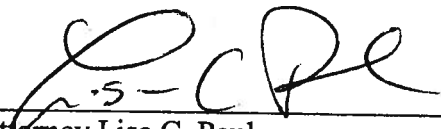
Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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and by first class mail on

Atty. Elizabeth G. Rich
Elizabeth Gamsky Rich & Associates SC
637 Walton Dr Ste 1
Plymouth, WI 53073-5003
Counsel for Respondent Kristen Gillan

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**



Attorney Lisa C. Paul
LISA C. PAUL LLC
Attorney for Respondent Kenneth J. Kosmoski

P.O Address:
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