



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JAN 07 2009

REPLY TO THE ATTENTION OF:  
L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8921 6082

Mr. Thomas A. Nowakowski, Mr. Brian T. Nowakowski,  
and Mr. Michael Moore  
15545 Mack Avenue  
Detroit, Michigan 48224

RECEIVED  
JAN - 8 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY,

Re: Thomas A. Nowakowski, Brian T. Nowakowski, Michael Moore,  
and Apple Apartments, Inc. TSCA-05-2009-0002

Dear Mr. Thomas A. Nowakowski, Brian T. Nowakowski, and Mr. Moore:

I have enclosed a complaint filed by the U.S. Environmental Protection Agency, Region 5, against Thomas A. Nowakowski, Brian T. Nowakowski, Michael Moore, and Apple Apartments, Inc. under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a). The complaint alleges violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seq.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Mary McAuliffe, Associate Regional Counsel at (312) 886-6237.

Sincerely,

Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

cc: Kim Corbin, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2009-0002</b>
	)	
<b>Thomas A. Nowakowski,</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Brian T. Nowakowski, Michael Moore,</b>	)	<b>Under Section 16(a) of the</b>
<b>Apple Apartments, Inc.,</b>	)	<b>Toxic Substances Control Act,</b>
<b>Detroit, Michigan,</b>	)	<b>15 U.S.C. § 2615</b>
	)	
<b>Respondents.</b>	)	

**RECEIVED**  
JAN - 3 2009

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

**Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondents are Thomas A. Nowakowski, Brian T. Nowakowski, Michael Moore (a/k/a, Nowakowski and Moore Real Estate), and Apple Apartments, Inc. with a place of business located at 15545 Mack Avenue, Detroit, Michigan.

**Statutory and Regulatory Background**

4. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 et seq., Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy

to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and sales. Section 1018, 42 U.S.C. § 4852d, requires the Administrator of EPA and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. On March 6, 1996, EPA and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with the Disclosure Rule by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a). The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which impose certain requirements on the sale or lease of target housing.

6. 40 C.F.R. § 745.103 defines 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.

7. 40 C.F.R. § 745.103 defines “residential dwelling” as (1) a single-family dwelling including attached structures such as porches and stoops: or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, in whole or in part, as the residence of one or more persons.

8. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

9. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a 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.

11. 40 C.F.R. § 745.103 defines “seller” as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

12. 40 C.F.R. § 745.103 defines “purchaser” as any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

13. 40 C.F.R. § 745.100 requires, among other things, that the seller or lessor of target housing complete the required disclosure activities before a purchaser or lessee is obligated under any contract to purchase or lease target housing.

14. 40 C.F.R. § 745.113(a) requires that each contract to sell target housing include an attachment containing a lead warning statement; a statement by the seller disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the seller that have been provided to

the purchaser regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records are available; a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the Lead Hazard Information Pamphlet; a statement by the purchaser that he/she has received or waived the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a); and signatures and dates of signatures of the seller, agent, and purchaser certifying the accuracy of their statements.

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor, agent, and lessee certifying the accuracy of their statements.

16. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

17. Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f), authorize the Administrator of EPA to assess a civil penalty under Section 16(a) of TSCA of up to \$10,000 for each violation of

Section 409 of TSCA. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

### **General Allegations**

18. Complainant incorporates paragraphs 1 through 17 of this Complaint as if set forth in this paragraph.

19. At various times prior to May 21, 2004, Respondent Thomas A. Nowakowski owned a single-family dwelling at 8030 Townsend in Detroit, Michigan.

20. At various times prior to May 21, 2004, Respondents Brian T. Nowakowski and Michael Moore owned and/or managed single-family dwellings at 14238 Glenwood, and 14358 Maddelein in Detroit, Michigan.

21. At various times prior to May 21, 2004, Respondent Apple Apartments, Inc. owned and/or managed a multi-unit, residential apartment building at 821 Minnesota, in Detroit, Michigan.

22. Apple Apartments, Inc.'s 1992 Articles of Incorporation with the State of Michigan (ID #472565) and its most recent corporate annual report (from 2005) lists Thomas A. Nowakowski as registered agent and president of Apple Apartments, Inc.

23. Respondents' properties at 14238 Glenwood, 14358 Maddelein, 821 Minnesota, #3, and 8030 Townsend in Detroit, Michigan (Residential Dwellings) were each constructed prior to 1978.

24. Respondents' Residential Dwellings are "target housing" as defined in 40 C.F.R. § 745.103.

25. On May 21, 2004, Complainant issued an administrative subpoena to Thomas Nowakowski, Brian Nowakowski, Nowakowski and Moore Real Estate, and Apple Apartments, Inc. under authority of Section 11 of TSCA, 15 U.S.C. § 2610, seeking, among other things, copies of all rental agreements, lead-based paint disclosure documentation, and any information concerning lead-based paint and/or lead-based paint hazards and/or information concerning residents' blood lead for all rental properties owned and/or managed by Respondents since April 1, 2001.

26. On July 26, 2004, Respondents provided Complainant with documents responsive to the TSCA administrative subpoena referenced in paragraph 25, above, including, among other things, information identifying Respondents as owners of the Residential Dwellings, along with rental agreements, quit claim deeds, lead-based paint disclosure documents, and City of Detroit Code Enforcement Notices and Complaints for lead paint violations.

27. On the following dates, Respondents Brian T. Nowakowski, Michael Moore, and Apple Apartments, Inc. entered into the following three written lease agreements (contracts) with individuals for the lease of Respondents' Residential Dwellings, as indicated in the following table:

<b>Address</b>	<b>Apt. #</b>	<b>Date of Lease</b>	<b>Lessor</b>
14238 Glenwood		1/5/04	Brian T. Nowakowski & Michael Moore
14358 Maddelein		1/22/04	Brian T. Nowakowski & Michael Moore
821 Minnesota	#3	4/1/04	Apple Apartments, Inc.

28. Each of the Residential Dwellings referenced in paragraph 27, above, was constructed prior to 1978.

29. Respondents' Residential Dwellings referenced in paragraphs 27 and 28, above, are "target housing" as defined in 40 C.F.R. § 745.103.

30. Each of the three contracts referenced in paragraph 27, above, covered a term of occupancy greater than 100-days.

31. Respondents, as the owners of the Residential Dwellings identified and referenced respectively in paragraphs 20 and 21, above, offered the Residential Dwellings for lease, and individuals entered into contracts on the dates listed in paragraph 27, above, to lease those Residential Dwellings.

32. Respondents Brian Nowakowski, Michael Moore, and Apple Apartments, Inc. are "lessors" and/or "agents", as defined in 40 C.F.R. § 745.103, since they have offered the target housing referenced in paragraphs 27 and 28, above, for lease.

33. Each individual who signed a lease to pay rent in exchange for occupancy of a Residential Dwelling, referenced in paragraphs 27 and 28, above, became a "lessee" as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

34. On March 2, 2004, Respondent Thomas A. Nowakowski entered into a written sales agreement (contract) with an individual for the sale of target housing at 8030 Townsend, Detroit, Michigan.

35. The Residential Dwelling referenced in paragraph 34, above, was constructed prior to 1978.

36. Respondent's Residential Dwelling referenced in paragraphs 34 and 35, above, is "target housing" as defined in 40 C.F.R. § 745.103.



37. Respondent is a “seller” as defined in 40 C.F.R. § 745.103, since he transferred legal title of the target housing referenced in paragraph 34, above, in return for consideration.

38. The person who signed the contract to purchase the target housing referenced in paragraph 34, above, became a “purchaser” as defined in 40 C.F.R. § 745.103, since it entered into an agreement to purchase an interest in target housing.

39. On August 14, 2008, EPA advised Respondents by letter that EPA was planning to file a civil administrative complaint against Respondents for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint. If Respondents believed there were financial factors which bore on Respondents’ ability to pay a civil penalty, the EPA asked Respondents to submit specific financial documents.

40. On October 20, 2008, EPA’s case development officer, Scott Cooper, received a call from Respondents’ Attorney, Kim Corbin, requesting one additional week to review the EPA’s letter referenced in paragraph 39, above.

41. As of the date of this filing, EPA had not received a response to the August 14, 2008, letter, referenced in paragraph 39, above, from Respondents or Respondents’ attorney.

42. The Director of the Land and Chemicals Division, EPA, Region 5, has determined that Respondents have violated the federal regulations regarding the disclosure of lead-based paint and/or lead based paint hazards, 40 C.F.R. Part 745, as described below, and thereby violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Failure to Disclose in Rental Transactions by Respondents**  
**Brian T. Nowakowski and Michael Moore**

**Counts 1 and 2**

43. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

44. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(1) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a Lead Warning Statement.

45. Count 1: Respondents Brian T. Nowakowski and Michael Moore failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 14238 Glenwood, Detroit, Michigan, in the January 5, 2004 contract referenced in paragraph 27, above.

46. Count 2: Respondents Brian T. Nowakowski and Michael Moore failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 14358 Maddelein, Detroit, Michigan, in the January 22, 2004 contract referenced in paragraph 27, above.

47. Respondents Brian T. Nowakowski and Michael Moore's failure to include a Lead Warning Statement, either within each contract or as an attachment to each contract, for each leasing transaction referenced in paragraphs 45 and 46, above, constitutes two violations of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

### Counts 3 and 4

48. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

49. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within each contract 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 the target housing or a lack of knowledge of such presence.

50. Count 3: Respondents Brian T. Nowakowski and Michael Moore failed to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for 14238 Glenwood, Detroit, Michigan, in the January 5, 2004 contract referenced in paragraph 27, above.

51. Count 4: Respondents Brian T. Nowakowski and Michael Moore failed to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for 14358 Maddelein, Detroit, Michigan, in the January 22, 2004 contract referenced in paragraph 27, above.

52. Respondents Brian T. Nowakowski and Michael Moore's failure to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within each contract

or as an attachment to each contract, in each contract for each leasing transaction referenced in paragraphs 50 and 51, above, constitutes two violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 5 and 6**

53. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

54. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(3) requires a lessor to include, either within each contract 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 housing that have been provided to the lessee or a statement that no such records are available.

55. Count 5: Respondents Brian T. Nowakowski and Michael Moore failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the contract for 14238 Glenwood, Detroit, Michigan, in the January 5, 2004 contract referenced in paragraph 27, above.

56. Count 6: Respondents Brian T. Nowakowski and Michael Moore failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the contract for 14358 Maddelein, Detroit, Michigan, in the January 22, 2004 contract referenced in paragraph 27, above.

57. Respondents Brian T. Nowakowski and Michael Moore's failure to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing, or a statement that no such records exist, either within each contract or as an attachment to each contract, for each leasing transaction referenced in paragraphs 55 and 56, above, constitutes two violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 7 and 8**

58. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

59. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

60. Count 7: Respondents Brian T. Nowakowski and Michael Moore failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for 4238 Glenwood, Detroit, Michigan, in the January 5, 2004 contract referenced in paragraph 27, above.

61. Count 8: Respondents Brian T. Nowakowski and Michael Moore failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R.

§ 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for 14358 Maddelein, Detroit, Michigan, in the January 22, 2004 contract referenced in paragraph 27, above.

62. Respondents Brian T. Nowakowski and Michael Moore's failure to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within each contract or as an attachment to each contract, for each leasing transactions referenced in paragraphs 60 and 61, above, constitutes two violations of 40 C.F.R § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Counts 9 and 10**

63. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

64. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract 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.

65. Count 9: Respondents Brian T. Nowakowski and Michael Moore failed to include the signatures of the lessor and lessee certifying to the accuracy of their statements along with the dates of such signatures , either within the contract or as an attachment to the lease

contract for 14238 Glenwood, Detroit, Michigan, in the January 5, 2004 contract referenced in paragraph 27, above.

66. Count 10: Respondents Brian T. Nowakowski and Michael Moore failed to include the signatures of the lessor and lessee certifying to the accuracy of their statements along with the dates of such signatures, either within the contract or as an attachment to the lease contract for 14358 Maddelein, Detroit, Michigan, in the January 22, 2004 contract referenced in paragraph 27, above.

67. Respondents Brian T. Nowakowski and Michael Moore's failure to include the signatures of the lessor and lessee certifying to the accuracy of their statements along with the dates of signature for each lease transaction, either within the contracts or as an attachment to the contracts to lease target housing, as referenced in paragraphs 65 and 66, above, constitutes two violations of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Failure to Disclose in a Rental Transaction by Respondent Apple Apartments, Inc.**

**Count 11**

68. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

69. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(1) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a Lead Warning Statement.

70. Count 11: Respondent Apple Apartments, Inc. failed to include a Lead Warning Statement, either within the contract or as an attachment to the contract for 821 Minnesota, #3, Detroit, Michigan, in the April 1, 2004 contract referenced in paragraph 27, above.

71. Respondent Apple Apartments, Inc.'s failure to include a Lead Warning Statement, either within each contract or as an attachment to each contract, for each leasing transaction referenced in paragraph 70, above, constitutes a violation of 40 C.F.R § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

### **Count 12**

72. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

73. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(2) requires a lessor to include, either within each contract 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 the target housing or a lack of knowledge of such presence.

74. Count 12: Respondent Apple Apartments, Inc. failed to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for 821 Minnesota, #3, Detroit, Michigan, in the April 1, 2004 contract referenced in paragraph 27, above.



75. Respondent Apple Apartments, Inc.'s failure to include a statement disclosing either the presence of any known lead-based paints and lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within each contract or as an attachment to each contract, in each contract for each leasing transaction referenced in paragraph 74, above, constitutes a violation of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 13**

76. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

77. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(3) requires a lessor to include, either within each contract 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 housing that have been provided to the lessee or a statement that no such records are available.

78. Count 13: Respondent Apple Apartments, Inc. failed to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist, either within the contract or as an attachment to the contract for 821 Minnesota, #3, Detroit, Michigan, in the April 1, 2004 contract referenced in paragraph 27, above.

79. Respondent Apple Apartments, Inc.'s failure to include a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the

target housing, or a statement that no such records exist, either within each contract or as an attachment to each contract, for each leasing transaction referenced in paragraph 78, above, constitutes a violation of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 14**

80. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

81. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

82. Count 14: Respondent Apple Apartments, Inc. failed to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for 821 Minnesota, #3, Detroit, Michigan, in the April 1, 2004 contract referenced in paragraph 27, above.

83. Respondent Apple Apartments, Inc.'s failure to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within each contract or as an attachment to each contract, for each leasing transactions referenced in paragraph 82, above,

constitute a violation of 40 C.F.R § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 15**

84. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

85. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, either within each contract 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.

86. Count 15: Respondent Apple Apartments, Inc. failed to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the sales contract for 821 Minnesota, #3, Detroit, Michigan, in the April 1, 2004 contract referenced in paragraph 27, above.

87. Respondent Apple Apartments, Inc.'s failure to include the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of signature for each rental transaction, either within the contract or as an attachment to the contract to lease target housing, as referenced in paragraph 86, above, constitutes a violation of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Failure to Disclose in a Sales Transaction by Respondent Thomas A. Nowakowski**

**Count 16**

88. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

89. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(1) requires the seller to include a Lead Warning Statement as an attachment to each contract to sell target housing.

90. Count 16: Respondent Thomas A. Nowakowski failed to include a Lead Warning Statement in an attachment to the sales contract for 8030 Townsend, Detroit, Michigan in the March 2, 2004 contract referenced in paragraph 34, above.

91. Respondent Thomas A. Nowakowski's failure to include a Lead Warning Statement as an attachment to the contracts to sell the target housing referenced in paragraph 90, above, constitutes a violation of 40 C.F.R. § 745.113(a)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 17**

92. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

93. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(2) requires a seller to include, as an attachment to the contract to sell target housing, a statement disclosing either the presence of any known lead-

based paint and/or lead-based paint hazards in the target housing being sold or a lack of knowledge of such presence.

94. Count 17: Respondent Thomas A. Nowakowski failed to include a statement by the seller disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence in an attachment to the sales contract for 8030 Townsend, Detroit, Michigan in the March 2, 2004 contract referenced in paragraph 34, above.

95. Respondent Thomas A. Nowakowski's failure to include a statement by the seller disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence in an attachment to the contracts to sell target housing, as referenced in paragraph 94, above, constitutes a violation of 40 C.F.R. § 745.113(a)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

#### **Count 18**

96. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

97. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(3) requires the seller to include, as an attachment to the contract to sell target housing, a list of 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 purchaser or a statement that no such records or reports are available.

98. Counts 18: Respondent Thomas A. Nowakowski failed to include a list of any records or reports, available to the seller regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the sales contract for 8030 Townsend, Detroit, Michigan in the March 2, 2004 contract referenced in paragraph 34, above.

99. Respondent Thomas A. Nowakowski's failure to include a list of any records or reports, available to the seller regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the contracts to sell target housing, as referenced in paragraph 98, above, constitutes a violation of 40 C.F.R. § 745.113(a)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

#### **Count 19**

100. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

101. 40 C.F.R. §745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before the purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(4) requires the seller to include, as an attachment to the contract, a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §§ 745.113(a)(2) and (a)(3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

102. Count 19: Respondent Thomas A. Nowakowski failed to include a statement from the purchaser affirming receipt of the information set out in 40 C.F.R. § 745.113(a)(2) and (3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696 in an attachment to

the sales contract for 8030 Townsend, Detroit, Michigan in the March 2, 2004 contract referenced in paragraph 34, above.

103. Respondent Thomas A. Nowakowski's failure to include a statement from the purchaser affirming receipt of the information set out in 40 C.F.R. § 113(a)(2) and (3) and the lead hazard information pamphlet required by 15 U.S.C. § 2696 in an attachment to the contracts to sell target housing, as referenced in paragraph 102, above, constitutes a violation of 40 C.F.R. § 745.113(a)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

#### **Count 20**

104. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

105. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before a purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(5) requires the seller to include, as an attachment to the contract, a statement by the purchaser that the purchaser has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity.

106. Count 20: Respondent Thomas A. Nowakowski failed to include a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity in an attachment to the sales contract for 8030 Townsend, Detroit, Michigan in the March 2, 2004 contract referenced in paragraph 34, above.

107. Respondent Thomas A. Nowakowski's failure to include a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity as an attachment to the contracts to sell the target housing referenced in paragraph 106, above, constitutes a violation of 40 C.F.R. § 745.113(a)(5), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

**Count 21**

108. Complainant incorporates paragraphs 1 through 42 of this Complaint as if set forth in this paragraph.

109. 40 C.F.R. § 745.100 requires, among other things, that the seller of target housing complete the required disclosure activities before a purchaser is obligated under a contract to purchase the housing. 40 C.F.R. § 745.113(a)(7) requires the seller to include, as an attachment to the contract, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

110. Count 21: Respondent Thomas A. Nowakowski failed to include the signatures of the seller and the purchaser certifying to the accuracy of their statements along with the dates of such signatures in an attachment to the sales contract for 8030 Townsend, Detroit, Michigan in the March 2, 2004 contract referenced in paragraph 34, above.

111. Respondent Thomas A. Nowakowski's failure to include the signatures of the seller and the purchaser certifying to the accuracy of their statements along with the dates of such signatures, in an attachment to the contracts to sell target housing, as referenced in paragraph 110, above, constitutes a violation of 40 C.F.R. § 745.113(a)(7), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).



### **Proposed Civil Penalty**

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. Part 745, Subpart F, authorize the Administrator of EPA to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of TSCA Section 409. Under the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997 (62 Fed. Reg. 35038) (1997). In determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

EPA calculates penalties by applying its Section 1018 - Disclosure Rule Enforcement Response Policy dated December 2007 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of a lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to Respondents' ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondents have

taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

As stated in paragraph 39, above, by letter dated August 14, 2008, the EPA advised Respondents, that EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes the assessment of a civil administrative penalty. EPA asked Respondents to identify any factors Respondents thought EPA should consider before issuing the complaint, and if Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty, EPA asked Respondents to submit specific financial documents. As of the date of this filing, Respondents had not responded to EPA's August 14, 2008, letter.

Based upon an evaluation of the facts alleged in this complaint, the statutory factors enumerated above, and the Response Policy, Complainant proposes that the Administrator assess the following civil penalties against Respondents for the violations alleged in this complaint:

**Failure to Disclose in Rental Transactions by Respondents**  
**Brian T. Nowakowski and Michael Moore**

	<b><u>Count 1</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(1).....		\$1,320
	<b><u>Count 2</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(1).....		\$1,320
	<b><u>Count 3</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(2).....		\$660
	<b><u>Count 4</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(2).....		\$660
	<b><u>Count 5</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$220

	<b><u>Count 6</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$220
	<b><u>Count 7</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(4).....		\$440
	<b><u>Count 8</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(4).....		\$440
	<b><u>Count 9</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(6).....		\$110
	<b><u>Count 10</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(6).....		\$110
<b>Proposed Civil Penalty.....</b>		<b>\$5,500</b>

**Failure to Disclose in a Rental Transaction by Respondent Apple Apartments, Inc**

	<b><u>Count 11</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(1).....		\$1,550
	<b><u>Count 12</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(2).....		\$770
	<b><u>Count 13</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(3).....		\$260
	<b><u>Count 14</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(4).....		\$520
	<b><u>Count 15</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(b)(6).....		\$130
<b>Proposed Civil Penalty.....</b>		<b>\$3,230</b>

**Failure to Disclose in a Sales Transaction by Respondent Thomas A. Nowakowski**

	<b><u>Count 16</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(1) .....		\$1,320

	<b><u>Count 17</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(2).....		\$660
	<b><u>Count 18</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(3).....		\$220
	<b><u>Count 19</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(4).....		\$440
	<b><u>Count 20</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(5).....		\$440
	<b><u>Count 21</u></b>	
42 U.S.C. § 4852d(b)(5)		
40 C.F.R. § 745.113(a)(7).....		\$110
<b>Proposed Civil Penalty.....</b>		<b>\$3,190</b>

**Rules Governing This Proceeding**

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

**Filing and Service of Documents**

Respondents must file with the Regional Hearing Clerk the original and one copy of each document Respondents intend to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Respondents must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Mary McAuliffe to receive any answer and subsequent legal documents that Respondents serve in this proceeding. You may telephone Mary McAuliffe at (312) 886-6237. Her address is:

Mary McAuliffe (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**Penalty Payment**

Respondents may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check by regular U.S. Postal Service mail to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Region 5  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondents must include the case name and docket number on the check and in the letter transmitting the check. Respondents simultaneously must send copies of the check and transmittal letter to Ms. McAuliffe and to:

Scott Cooper (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

### **Answer and Opportunity to Request a Hearing**

If Respondents contest any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that they are entitled to judgment as a matter of law, Respondents may request a hearing before an Administrative Law Judge. To request a hearing, Respondents must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, Respondents must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondents' written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondents have no knowledge of a particular factual allegation. Where Respondents state that they have no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondents' answer must also state:

- (a) The circumstances or arguments which Respondents allege constitute grounds of defense;
- (b) The facts that Respondents dispute;
- (c) The basis for opposing the proposed penalty; and
- (d) Whether Respondents request a hearing.

If Respondents do not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondents constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondents must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

### **Settlement Conference**

Whether or not Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondents may contact Ms. McAuliffe at the address provided above.

Respondents' request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondents may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

### **Continuing Obligation to Comply**

Respondents' payment of the civil penalty will not satisfy Respondents' legal obligation to comply with TSCA and any other applicable federal, state, or local law.

**Consent Agreement and Final Order**

The EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Consent Order.

Jan. 7, 2009  
Date



Margaret M. Guerriero  
Director  
Land and Chemicals Division

RECEIVED  
JAN - 8 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY




**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint involving Thomas A. Nowakowski, Brian T. Nowakowski, Michael Moore, and Apple Apartments, Inc., of Detroit, Michigan was filed on January 8, 2009, with the Regional Hearing Clerk (E-13J), U. S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7001 0320 0005 8921 6082, along with a copy each of the “Consolidated Rules of Practice, 40 C.F.R. Part 22,” and “Section 1018 Disclosure Rule Enforcement Response Policy” to:

Mr. Thomas A Nowakowski  
Mr. Brian T. Nowakowski  
Mr. Michael Moore  
15545 Mack Avenue  
Detroit, Michigan 48224

with intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Mary McAuliffe, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

RECEIVED  
JAN - 8 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Docket No. TSCA-05-2009-0002