

Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (also known as the “Disclosure Rule”), in relation to four (4) lease agreements associated with three (3) different target housing units, described more fully below.

In support of this Complaint, Complainant alleges the following:

I. JURISDICTION

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§2615 and 2689; Section 1018 of RLBPHRA, 42 U.S.C. §4852d; 40 C.F.R. Part 745, Subpart F; and 40 C.F.R. §§22.1(a)(5) and 22.4.

II. STATUTORY AUTHORITY

2. Failure to comply with RLBPHRA Section 1018, 42 U.S.C. §4852d, or with any rule or regulation issued thereunder, including, but not limited to, 40 C.F.R. Part 745, Subpart F, constitutes a violation of TSCA Section 409, 15 U.S.C. §2689.
3. Pursuant to TSCA Section 16, 15 U.S.C. §2615, violations of TSCA Section 409, 15 U.S.C. §2689, are subject to the assessment of civil and/or criminal penalties.

III. DEFINITIONS AND APPLICABLE REGULATIONS

4. Pursuant to 40 C.F.R. §745.101, the requirements of 40 C.F.R. Part 745, Subpart F apply to all transactions to sell or lease “target housing,” with exceptions not here relevant.
5. Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. §4851b(27), TSCA Section 401(17), 15 U.S.C. §2681(17), and 40 C.F.R. §745.103, the term “target housing” means “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.”

6. Pursuant to 40 C.F.R. §745.103, the term “lead-based paint” means, “paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm²] or 0.5 percent by weight.”
7. Pursuant to 40 C.F.R. §745.103, the term “lead-based paint hazard” means “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.”
8. Pursuant to 40 C.F.R. §745.103, the term “lessor” means “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. Pursuant to 40 C.F.R. §745.103, the term “lessee” means “means 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. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. §4851b(23), TSCA Section 401(14), 15 U.S.C. §2681(14), and 40 C.F.R. §745.103, the term “residential dwelling” means: “(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, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.”

11. Pursuant to RLBPHRA Section 1004(24), 42 U.S.C. §4851b(24), and TSCA Section 401(15), 15 U.S.C. §2681(15), the term “residential real property” means “real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.”
12. 40 C.F.R. §745.107(a)(1) provides that prior to the lessee becoming obligated under any contract to lease target housing, “the seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.”
13. 40 C.F.R. §745.113(b)(1) provides that each contract to lease target housing shall include, as an attachment or within the contract, “a Lead Warning Statement with the following language:
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”
14. 40 C.F.R. §745.113(b)(2) provides that each contract to lease target housing shall include, as an attachment or within the contract, “a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint

hazards, and the condition of the painted surfaces” (These alternative statements and disclosures shall hereinafter be collectively referred to as the “Lead Disclosure Statements”).

15. 40 C.F.R. §745.113(b)(3) provides that each contract to lease target housing shall include, as an attachment or within the contract, “a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate” (Such list, or the alternative statement that no such records or reports are available, shall hereinafter be referred to as the “Lead Records/Reports List Statement”).
16. 40 C.F.R. §745.113(b)(4) provides that each contract to lease target housing shall include, as an attachment or within the contract, “a statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. §2696 (sic)” (hereinafter referred to as the “Receipt of Information Statement”).
17. 40 C.F.R. §745.113(b)(6) provides that each contract to lease target housing shall include, as an attachment or within the contract, “the signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature. (hereinafter referred to as the “Certification of Accuracy”)

IV. GENERAL ALLEGATIONS

18. At all times relevant to the allegations in this Complaint, Respondent was the “lessor,” as that term is defined in 40 C.F.R. §745.103, of the following three (3) properties: 16 Vine Street, Kemar, PA; 501 Walnut Street, Penns Creek Down, PA; and 210 Lenker Ave, Sunbury, PA (hereinafter, collectively the “Mull Properties”).

19. At all times relevant to the violations alleged herein, each of the Mull Properties consisted of real property on which there was situated one building used as the home or residence for one or more persons
20. At all times relevant to the violations alleged herein, each of the Mull Properties was housing constructed prior to 1978, and was neither “housing for the elderly” or persons with disabilities nor a “0-bedroom dwelling” as those terms are defined in 40 C.F.R. §745.103.
21. At all times relevant to the violations alleged herein, the building situated on the real property located at each of the Mull Properties contained a “residential dwelling” and was “target housing” within the meaning of RLBPHRA Section 1004(23) and (27), 42 U.S.C. §4851b(23) and (27), TSCA Section 401(14) and (17), 15 U.S.C. §2681(14) and (17), and 40 C.F.R. §745.103.
22. At all times relevant to the violations alleged herein, none of the Mull Properties were “found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program,” as provided at 40 C.F.R. §745.101(b).
23. At all times relevant to the violations alleged herein, Respondent was the “lessor,” within the meaning of 40 C.F.R. §745.103, with respect to each of the Mull Properties as identified below:

Lease Transaction	Target Housing Property Address	Lease Date	Counts
1	16 Vine Street, Apt C., Middleburg, PA 17833	07/29/13	1-5
2	210 Lenker Avenue, Sunbury, PA 17801	11/19/13	6-10
3	210 Lenker Avenue, Sunbury, PA 17801	07/01/15	11-15

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. EPA received a tip/complaint on July 30, 2014, by telephone, from a lessee at 210 Lenker Avenue, Sunbury, Pennsylvania (“tipster”) alleging that her child had been diagnosed by the Kirby Memorial Health Center with an elevated blood lead level of seven (7) ug/dl (“EBL”). The tipster further alleged that Respondent was not complying with the Real Estate Notification and Disclosure Rule and had not provided her with a copy of the lead hazard pamphlet.
25. On August 8, 2014, EPA received a written declaration from the tipster alleging that before she signed her lease she had not received (1) a copy of the pamphlet, “Protect Your Family From Lead in Your Home”; (2) any information about lead-based paint or lead-based paint hazards; and (3) any records or reports from the Respondent regarding lead-based paint.
26. Included with the tipster’s declaration was a copy of her November 19, 2013 lease for the 210 Lenker Avenue property. The lease presented was a one (1) page double sided lease which did not include any attachments.
27. On August 20, 2014, EPA sent an Inspection Confirmation Letter to Respondent scheduling a compliance inspection under the Real Estate Notification and Disclosure Rule for August 26, 2014 (“Notice of Inspection #1). The letter requested that Respondent provide a list of all pre-1978 properties which had been offered for rent between August 1, 2013 through the date of the letter and to confirm the date and time for the inspection.
28. On August 25, 2014, after no response from Respondent, the EPA Inspector telephoned Respondent to confirm the August 26, 2014 inspection. During the call, Respondent stated that (1) he did not have enough time to gather the requested information for the inspection; (2) he was evicting the tipster; and (3) the tipster told him her child had been poisoned by lead and she was contacting EPA because he had not provided lead disclosures in his leases. Respondent

went on to tell the inspector that although *he did* provide lead disclosure at his HUD properties he was unaware that he had to provide lead disclosure for his other rental properties.

29. On July 15, 2015, EPA sent a 2nd Inspection Confirmation Letter to Respondent rescheduling the compliance inspection under the Real Estate Notification and Disclosure Rule for July 21, 2015 (“Notice of Inspection #2). This 2nd letter requested that Respondent provide a list of all pre-1978 properties which had been offered for rent between July 1, 2012 through the date of the letter and to confirm the date and time for the inspection.
30. On July 20, 2015, after no response from Respondent, the EPA Inspector telephoned Respondent and left a voice message that he would be conducting the compliance inspection at the Respondent’s home the next day, July 21, 2015.
31. On July 21, 2015, EPA conducted a compliance inspection at Respondent’s home address. During the inspection, Respondent told the inspectors that he was EPA certified and did his own repainting work at his properties. Respondent again stated that he had been unaware of his duty to make lead disclosures, for his non-HUD properties, until he received EPA’s Notice of Inspection #1 in August 2014..
32. During the inspection, Respondent stated that **after** receiving the Notice of Inspection Letter #1 he went to all of his tenants and (1) handed out the lead hazard pamphlet and (2) had tenants sign lead disclosure statements. In each of these lead disclosure statements, Respondent indicated that he did not have available any records or reports pertaining to lead-based paint or lead-based paint hazards in the respective housing.
33. At the conclusion of the inspection, the EPA inspector collected leases for each of the Mull Properties and none of these leases included a list of records or reports pertaining to the presence of lead-based paint or lead-based paint hazards at any of the Mull Properties.

Counts 1-5 (The Vine Street Target Housing)

34. The allegations contained in Paragraphs 1 through 33, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
35. Respondent entered into a written contract, dated July 29, 2013 (hereinafter referred to as "Lease Transaction #1") with a "lessee," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of renting the target housing located at 16 Vine Street, Apt. C., Kemar, Pennsylvania 17833 (hereinafter "Vine Street Target Housing").
36. The occupants of the Vine Street Target Housing, during the term of Lease Transaction #1, included two (2) lessees, one male and one female.
37. Lease Transaction #1 was not a "short-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. §745.101(c).
38. Lease Transaction #1 was not a "renewal of existing lease(s) in target housing in which the lessor has previously disclosed all information required under §745.107 and where no new information described in §745.107 has come into the possession of the lessor," as provided at 40 C.F.R. §745.101(d).
39. At the time of execution, Lease Transaction #1 did not include, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. §745.113(b)(1). However, a Lead Warning Statement was included in a Lead Disclosure Form prepared and appended to Lease Transaction #1 after the execution of such lease.
40. At the time of execution, Lease Transaction #1 did not include, as an attachment or within the contract, a Lead Disclosure Statement by Respondent disclosing the presence of known lead-based paint or lead-based paint hazards at the Vine Street Target Housing or alternatively indicating that Respondent had no knowledge of the presence of lead-based paint or lead-based

paint hazards as required by 40 C.F.R. §745.113(b)(2). However, a Lead Disclosure Statement was included in a Lead Disclosure Form prepared and appended to Lease Transaction #1 after the execution of such lease.

41. At the time of execution, Lease Transaction #1 did not include, as an attachment or within the contract, a statement indicating that Respondent did not have available any records/reports regarding the presence of lead-based paint and or lead-based paint hazards at the Vine Street Target Housing, as required by 40 C.F.R. §745.113(b)(3). However, a Lead Records/Reports List Statement was included in a Lead Disclosure Form prepared and appended to Lease Transaction #1 after execution of such lease indicating that Respondent had no such records or reports available.
42. At the time of execution, Lease Transaction #1 did not include the Receipt of Information Statement affirming either each lessees' receipt of the information set out in the Lead Disclosure Statement and the Lead Records/Reports List Statement and the lead hazard information pamphlet as required by 40 C.F.R. §745.113(b)(4). Although, a Lessee's *Acknowledgement Statement* was included in a Lead Disclosure Form prepared and appended to Lease Transaction #1 after the execution of such lease, the statement did not include an acknowledgment by either lessee affirming their receipt of the lead hazard information pamphlet required under 15 U.S.C. §2686.
43. At the time of execution, Lease Transaction #1 did not include a Certification of Accuracy with the signature of either the male or female lessee certifying the accuracy of their statements along with the dates of signature as required by 40 C.F.R. §745.113(b)(6). Although, a Certification of Accuracy was included in a Lead Disclosure Form prepared and appended to Lease

Transaction #1 after the execution of such lease, the Certification did not include the signature or date of signature of the male lessee.

44. Count 1: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #1, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. §745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
45. Count 2: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #1, as an attachment to or within the contract, the Lead Disclosure Statement required by 40 C.F.R. §745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
46. Count 3: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #1, as an attachment to or within the contract, the Lead Records and Reports List Statement required by 40 C.F.R. §745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
47. Count 4: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #1, as an attachment to or within the contract, the Receipt of Information Statement required by 40 C.F.R. §745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
48. Count 5: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #1, as an attachment to or within the contract, the Certification of Accuracy required by 40 C.F.R. §745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.

Counts 6-10 (The Lenker Avenue Target Housing)

49. The allegations contained in paragraphs 1- 48, above, of this Complaint are incorporated by reference herein as though fully set forth at length.
50. Respondent entered into a written contract, dated November 19, 2013 (hereinafter referred to as "Lease Transaction #2"), with a "lessee," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of renting the target housing located at 210 Lenker Avenue, Middleburg, Pennsylvania 17801 (hereinafter "Lenker Avenue Target Housing").
51. The occupants of the Lenker Avenue Target Housing, during the term of Lease Transaction #2, included two (2) lessees, one adult male and one adult female (the "tipster"), and two (2) children, ages 9 years old and < 2 months old. Within one (1) year of residing at the Lenker Avenue Target Housing, the youngest child was diagnosed with an elevated blood lead level (EBL).
52. Lease Transaction #2 was not a "short-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. §745.101(c).
53. Lease Transaction #2 was not a "renewal of existing lease in target housing in which the lessor has previously disclosed all information required under §745.107 and where no new information described in §745.107 has come into the possession of the lessor," as provided at 40 C.F.R. §745.101(d).
54. Respondent failed to provide the lessees of Lease Transaction #2, the EPA-approved lead hazard information pamphlet required by 40 C.F.R. §745.107(a)(1), prior to the lessee becoming obligated to lease the Lenker Avenue Target Housing.
55. At the time of execution, Lease Transaction #2 did not include, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. §745.113(b)(1).

56. At the time of execution, Lease Transaction #2 did not include, as an attachment or within the contract, the Lead Disclosure Statement by Respondent disclosing the presence of known lead-based paint or lead-based paint hazards at the Lenker Avenue Target Housing or alternatively indicating that Respondent had no knowledge of the presence of lead-based paint or lead-based paint hazards as required by 40 C.F.R. §745.113(b)(2).
57. At the time of execution, Lease Transaction #2 did not include, as an attachment or within the contract, a statement indicating that Respondent did not have available any records/reports regarding the presence of lead-based paint and or lead-based paint hazards at the Lenker Avenue Target Housing, as required by 40 C.F.R. §745.113(b)(3).
58. At the time of execution, Lease Transaction #2 did not include a Certification of Accuracy with the signature of both the male and female lessee certifying the accuracy of their statements along with the dates of signature as required by 40 C.F.R. §745.113(b)(6).
59. Count 6: Under 40 C.F.R. §745.118(e), Respondent's failure to provide the lead hazard information pamphlet to the lessees of the Lenker Avenue Target Housing, prior to the lessees becoming obligated under Lease Transaction #2, as required by 40 C.F.R. §745.107(a)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
60. Count 7: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #2, as an attachment to or within the contract, the Lead Warning Statement required by 40 C.F.R. §745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
61. Count 8: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #2, as an attachment to or within the contract, the Lead Disclosure Statement

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

62. Count 9: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #2, as an attachment to or within the contract, the Lead Records and Reports List Statement required by 40 C.F.R. §745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.

63. Count 10: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #2, as an attachment to or within the contract, the Certification of Accuracy required by 40 C.F.R. §745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.

Counts 11-15 (The Lenker Avenue #2 Target Housing)

64. The allegations contained in paragraphs 1- 63, above, of this Complaint are incorporated by reference herein as though fully set forth at length.

65. Respondent entered into a written contract, dated July 1, 2015 (hereinafter referred to as "Lease Transaction #3"), with a "lessee," as that term is defined at 40 C.F.R. Section 745.103, for the purpose of renting the Lenker Avenue Target Housing, where a child previously diagnosed with an EBL had resided a year prior (hereinafter the "Lenker Avenue #2 Target Housing").

66. The occupants of the Lenker Avenue #2 Target Housing, during the period of Lease Transaction #3, included two (2) lessees, one male and one female, and four (4) children, ages not provided.

67. Lease Transaction #3 was not a "short-term lease of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. §745.101(c).

68. Lease Transaction #3 was not a "renewal of existing leases in target housing in which the lessor has previously disclosed all information required under §745.107 and where no new information

described in §745.107 has come into the possession of the lessor,” as provided at 40 C.F.R. §745.101(d).

69. At the time of execution, Lease Transaction #3 did not include, as an attachment or within the contract, the Lead Warning Statement required by 40 C.F.R. §745.113(b)(1). However, a Lead Warning Statement was included in a Lead Disclosure Form later appended to Lease Transaction #3.
70. At the time of execution, Lease Transaction #3 did not include, as an attachment or within the contract, the Lead Disclosure Statement by Respondent disclosing the presence of known lead-based paint or lead-based paint hazards at the Lenker Avenue #2 Target Housing or alternatively indicating that Respondent had no knowledge of the presence of lead-based paint or lead-based paint hazards as required by 40 C.F.R. §745.113(b)(2). However, a Lead Disclosure Statement was included in a Lead Disclosure Form prepared and appended to Lease Transaction #3 after the execution of such lease.
71. At the time of execution, Lease Transaction #3 did not include, as an attachment or within the contract, a statement indicating that Respondent did not have available any records/reports regarding the presence of lead-based paint and or lead-based paint hazards at the Lenker Avenue #2 Target Housing, as required by 40 C.F.R. §745.113(b)(3). However, a Lead Records/Reports List Statement was included in a Lead Disclosure Form prepared and appended to Lease Transaction #3 after execution of such lease, indicating that Respondent had no such records or reports available.
72. At the time of execution, Lease Transaction #3 did not include the Receipt of Information Statement acknowledging either lessees receipt of the information set out in the Lead Disclosure Statement and the Lead Records/Reports List Statement and the lead hazard information

pamphlet as required by 40 C.F.R. §745.113(b)(4). Although a Lessee's *Acknowledgement Statement* was included in a Lead Disclosure Form prepared and appended to Lease Transaction #3 after the execution of such lease, the statement did not include an acknowledgement by either lessee affirming their receipt of the lead hazard information pamphlet required under 15 U.S.C. §2686.

73. At the time of execution, Lease Transaction #3 did not include a Certification of Accuracy with the signature of either the male or female lessee certifying the accuracy of their statements along with the dates of signature as required by 40 C.F.R. §745.113(b)(6). Although a Certification of Accuracy was included in a Lead Disclosure Form prepared and appended to Lease Transaction #3 after the execution of such lease, the certification did not include the signature or date of the female lessee.
74. Count 11: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #3, as an attachment to or within the contract, the Lead Warning Statement required by 40 C.F.R. §745.113(b)(1), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
75. Count 12: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #3, as an attachment to or within the contract, the Lead Disclosure Statement required by 40 C.F.R. §745.113(b)(2), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
76. Count 13: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #3, as an attachment to or within the contract, the Lead Records and Reports List Statement required by 40 C.F.R. §745.113(b)(3), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.

77. Count 14: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #3, as an attachment to or within the contract, the Receipt of Information Statement required by 40 C.F.R. §745.113(b)(4), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.
78. Count 15: Under C.F.R. §745.118(e), Respondent's failure to include at the time of execution of Lease Transaction #3, as an attachment to or within the contract, the Certification of Accuracy required by 40 C.F.R. §745.113(b)(6), constitutes a violation of RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. §2689.

V. CIVIL PENALTY

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §4852d, authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. §2615, in the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. §2689. This amount has been adjusted under the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and 40 C.F.R. §745.118(f), which increases the maximum civil penalties which can be assessed by EPA under 42 U.S.C. §4852d to \$16,000 for violations occurring after January 12, 2009 and through November 2, 2015.

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. §2615, 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, 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 ("statutory factors"). In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and

EPA's Section 1018 Disclosure Rule Enforcement Response and Penalty Policy ("ERP"), dated December 2007. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Pursuant to 40 C.F.R. §22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. See 40 C.F.R. §22.19(a)(4). In calculating a specific penalty pursuant to 40 C.F.R. §22.19(a)(4), Complainant will consider, among other factors, facts and circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued.

This Complaint does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. §2412. Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes the assessment of a civil penalty of up to \$16,000 against the Respondent for each violation alleged in this Complaint. Pursuant to 40 C.F.R. §22.14(a)(4)(ii), an explanation of the number and severity of violations is as follows:

Penalty Calculation Explanation

1. Circumstance Levels:
 - A. Violation of 40 C.F.R. §745.107(a)(1): Violation of the requirements set forth at 40 C.F.R. §745.107(a)(1) is deemed to represent a "high" probability of impairing a lessee's ability to assess the information required to be disclosed and is characterized as a Circumstance Level 1 violation in the ERP. As a result, the violation alleged in Count 6 of this Complaint may be characterized as a Circumstance Level 1 violation for purposes of calculating an appropriate penalty.

- B. Violation of 40 C.F.R. §745.113(b)(1): Violation of the requirements set forth at 40 C.F.R. §745.113(b)(1) is deemed to represent a “high” probability of impairing a lessee’s ability to assess the information required to be disclosed and is characterized as a Circumstance Level 2 violation in the ERP. As a result, violations alleged in Counts 1, 7 and 11 of this Complaint may be characterized as a Circumstance Level 2 violation for purposes of calculating an appropriate penalty
- C. Violations of 40 C.F.R. §745.113(b)(2): Violation of the requirements set forth at 40 C.F.R. §745.113(b)(2) is deemed to represent a “medium” probability of impairing a lessee’s ability to assess the information required to be disclosed and is characterized as a Circumstance Level 3 violation in the ERP. As a result, violations alleged in Counts 2, 8 and 12 of this Complaint may be characterized as a Circumstance Level 3 violation for purposes of calculating an appropriate penalty.
- D. Violations of 40 C.F.R. §745.113(b)(3): Violation of the requirements set forth at 40 C.F.R. §745.113(b)(3) is deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and is characterized as a Circumstance Level 5 violation in the ERP. As a result, violations alleged in Counts 3, 9 and 13 of this Complaint may be characterized as a Circumstance Level 5 violation for purposes of calculating an appropriate penalty.
- E. Violations of 40 C.F.R. §745.113(b)(4): Violation of the requirements set forth at 40 C.F.R. §745.113(b)(4) is deemed to represent a “medium” probability of impairing a lessee’s ability to assess the information required to be disclosed and is characterized as a Circumstance Level 4 violation in the ERP. As a result, violations alleged in Counts 4

and 14 of this Complaint may be characterized as a Circumstance Level 4 violation for purposes of calculating an appropriate penalty.

- F. Violations of 40 C.F.R. §745.113(b)(6): Violation of the requirements set forth at 40 C.F.R. §745.113(b)(6) is deemed to represent a “low” probability of impairing a lessee’s ability to assess the information required to be disclosed and is characterized as a Circumstance Level 6 violation in the ERP. As a result, violations alleged in Counts 5, 10 and 15 of this Complaint may be characterized as a Circumstance Level 6 violation for purposes of calculating an appropriate penalty.

2. Extent Levels:

- A. Major Violations: Defined as “[p]otential for ‘serious’ damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees where “a child under 6 years of age, or a pregnant woman” lives in the target housing is considered a “Major Extent” violation under the ERP. Respondent failed to provide disclosures and/or certifications in one lease transaction where children under the age of 6 were present. Accordingly, violations associated with Lease Transaction #2, for a total of 5 violations, are “Major Extent” violations.
- B. Significant Violations: Defined as “[p]otential for ‘significant’ damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees where “a child 6 years of age or older but less than 18 years of age” live in the target housing “or age of occupant not provided” is considered a “Significant Extent” violation under the ERP. Respondent failed to provide disclosures and/or certifications in two lease transactions where children were present, but ages were unknown.

Accordingly, violations associated with Lease Transaction #3, for a total of 5 violations, are “Significant Extent” violations.

- C. Minor Violations: Defined as “[p]otential for a ‘lesser’ amount of damage to human health or the environment.” Failure to provide lead-based paint disclosures and/or certifications to lessees where no children or pregnant women live in the target housing is considered a “Minor Extent” violation under the ERP. Respondent failed to provide disclosures and/or certifications in one lease transaction where no children or pregnant women were identified as being present. Accordingly, violations associated with Lease Transaction #1, for a total of 5 violations, are “Minor Extent” violations.

In addition, EPA will consider other information received after the filing of this Complaint, including, among other factors, Respondent’s ability to pay, to adjust the proposed civil penalty assessed in this Complaint. With respect to Respondent’s ability to pay the proposed penalty, it is Respondent’s responsibility to assert such a claim and provide to Complainant financial information to support and establish any such claim that Respondent is unable to pay the proposed penalty. To the extent that facts or circumstances, including, but not limited to, additional information concerning Respondent’s ability to pay the proposed penalty that were unknown to Complainant at the time of the issuance of the Complaint become known to Complainant after issuance of the Complaint, such facts and circumstances may be considered as a basis for adjusting the civil penalty proposed in this Complaint

VI. OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint and the appropriateness of any penalty. To request a hearing,

Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk, within thirty (30) days of receipt of this Complaint, at the following address:

Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. Failure of the Respondent to admit, deny or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

Failure to file a written Answer within thirty (30) days may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order. Default by a respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations.

Any hearing requested by Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Donzetta Thomas
Senior Assistant Regional Counsel

Mail Code 3RC50
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VIII. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. A request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer.

The procedures in the Consolidated Rules of Practice for quick resolution of a proceeding do not apply in this case because a specific penalty is not proposed. See 40 C.F.R. §22.18(a).

In the event settlement is reached, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.


If you wish to arrange a settlement conference, please contact Ms. Thomas, at (215) 814-2474. Please note that a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following its receipt of this Complaint.

IX. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional

Counsel; U.S. EPA, Region III, Land and Chemicals Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an ex parte communication with the trial staff or any representative of any Respondent on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 5.22.18



John A. Armstead, Director
Land and Chemicals Division

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

In the Matter of:)

Gregory Mull)
77 Mull Road)
Middleburg, PA 17842)

RESPONDENT)

) Docket No.: TSCA-03- 2018-0063

) Proceeding Under Section 16(a) of the
) Toxic Substances Control Act, 15 U.S.C.
) Section 2615(a)
)

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Administrative Complaint and Opportunity for a Hearing ("Complaint") was filed today with the Regional Hearing Clerk, EPA, Region III, and that a copy of the Complaint was sent via United Parcel Service - Overnight to the following:

Gregory Mull
77 Mull Road
Middleburg, PA 17842

5/24/2018
Date



Donzetta Thomas (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
(215) 814-2474

