



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

AUG 14 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL
RECEIPT NO. 7001 0320 0006 1562 3198

Edward L. Murray, Jr.
9410 Mercury Drive
Indianapolis, Indiana 46227

Re: In the Matter of Edward L. Murray, Jr., Docket No: TSCA-05-2007-0013

Dear Mr. Murray:

I have enclosed a complaint filed by the United States Environmental Protection Agency, Region 5 against you, 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 Cynthia King, Associate Regional Counsel at (312) 886-6831.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero, Director
Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. <u>TSCA-05-2007-0013</u>
)	
Edward L. Murray, Jr.)	Proceeding to Assess a Civil Penalty
Indianapolis, Indiana)	Under Section 16(a) of the Toxic
)	Substance Control Act
Respondent.)	
_____)	

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 (U.S. EPA), Region 5.
3. Respondent is Edward L. Murray, Jr., an individual who resides at 9410 Mercury Drive, Indianapolis, Indiana 46229.

Statutory and Regulatory Background

4. In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 (Section 1018), 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. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children.

5. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements that must be made as part of residential rentals and sales. Under Section 1018, 42 U.S.C. § 4852d, the Administrator must promulgate regulations for the disclosure of lead-based paint and/or lead-based paint hazards in target housing that is offered for sale or lease.

6. On March 6, 1996, U.S. EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to Section 1018, 42 U.S.C. § 4852d. The Disclosure Rule implements the provisions of Section 1018, 42 U.S.C. § 4852d, and imposes certain requirements on the sale and lease of target housing.

7. 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).

8. 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.

9. 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.

10. 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.

11. 40 C.F.R. § 745.103 defines “owner” as any entity that has legal title to target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

12. 40 C.F.R. § 745.113(b) requires each contract to lease target housing to include, among other things, as an attachment or within the contract: a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing being leased 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 (b)(3), and the lead hazard information pamphlet.

13. 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 U.S. EPA administrative civil penalties under to Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

General Allegations

14. At all times relevant to this complaint, Respondent owned apartment residential buildings in Indianapolis, Indiana, at, but not limited to, the following addresses: 952 West 34th Street, 814 East 46th Street, 3309 Boulevard Avenue, 3116 Boulevard Place, 2531 North Broadway Avenue, 3527 College Avenue, 1101 Fall Creek Parkway, 3252 Nicholas Avenue, 3033 North Park Avenue, and 2516 Park Avenue.

15. At all times relevant to this complaint, Respondent owned more than four residential dwellings, and therefore, was required to comply with the Disclosure Rule.

16. Each residential building was constructed prior to 1978.

17. Each residential building and each rental unit within such building is “target housing” as defined at 40 C.F.R. § 745.103.

18. On August 26, 2004, an authorized representative of U.S. EPA conducted an inspection at Edward L. Murray, Jr.’s property at 3527 North College Avenue, Indianapolis, Indiana, to monitor compliance with Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and its implementing regulations at 40 C.F.R. Part 745, Subpart F.

19. On November 19, 2004, U.S. EPA received documents from Respondent, regarding Respondent’s compliance with Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and its implementing regulations at 40 C.F.R. Part 745, Subpart F.

20. On the following dates, Respondent entered into written lease agreements (contracts) with individuals for the lease of units in the following apartment buildings:

Address	Children	Date of Lease
952 West 34 th Street, Indianapolis, Indiana	N	8/21/03
814 East 46 th Street, Indianapolis, Indiana	?	9/10/2004
3309 Boulevard Ave., Indianapolis, Indiana	Y	11/29/2003
3116 Boulevard Ave. Indianapolis, Indiana	N	8/19/2003
2531 North Broadway, Indianapolis, Indiana	N	4/1/2000
3527 College Avenue, Indianaopolis, Indiana	N	3/1/2004
1101 Fall Creek Parkway, Indianapolis, IN	N	1/20/2003
3252 Nicholas Ave., Indianapolis, Indiana	N	12/4/2001
3033 North Park Ave, Indianapolis, Indiana	N	10/12/2001
2516 Park Avenue, Indianapolis, Indiana	N	6/2/2003

21. Each of the 10 contracts, referenced in the table in paragraph 20, above, covered a term of occupancy greater than 100 days.

22. Respondent is a “lessor,” as defined by 40 C.F.R. § 745.103, because he offered the target housing, referenced in the table in paragraph 20, above, for lease.

23. Each individual who entered into an agreement to lease a unit in the target housing referenced in paragraph 20, above, is a “lessee,” as defined by 40 C.F.R. § 745.103.

24. On August 21, 2006, U.S. EPA advised Respondent by letter that U.S. EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of Section 1018 and that the complaint would seek a civil penalty. U.S. EPA asked Respondent to identify any factors Respondent thought U.S. EPA should consider before issuing the complaint. U.S. EPA asked Respondent to submit specific financial documents if he believed U.S. EPA should consider information regarding Respondent’s ability to pay a penalty.

25. On August 28, 2006, Respondent received the prefiling letter referenced in paragraph 24, above. Respondent has not claimed an inability to pay a penalty and did not provide facts or other information concerning an ability to pay a penalty.

26. On December 5, 2006, U.S. EPA again advised Respondent by letter to submit specific financial documents if he believed U.S. EPA should consider information regarding Respondent’s ability to pay a penalty and to consider lead abatement in his properties as a supplemental environmental project to mitigate the penalty.

27. On December 14, 2006, both in a telephone conference call and in a letter, Respondent was advised to submit specific financial documents if he believed U.S. EPA should consider information regarding Respondent’s ability to pay a penalty and to consider lead abatement in his properties as a supplemental environmental project to mitigate the penalty.

28. On January 12, 2007, U.S. EPA again advised Respondent by letter to submit specific financial documents if he believed U.S. EPA should consider information regarding Respondent's ability to pay a penalty and to consider lead abatement in his properties as a supplemental environmental project to mitigate the penalty.

29. The Director of the Land and Chemicals Division has determined that the Respondent has violated 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 therefore violated Section 409 of TSCA, 15 U.S.C. § 2689.

Violations

Counts 1-10: Failure to Include a Lead Disclosure Statement in Rental Contracts: 40 C.F.R. § 745.113(b)(2)

30. Paragraphs 1 through 29 of this Complaint are incorporated here by reference.

31. 40 C.F.R. § 745.113(b)(2) and 40 C.F.R. § 745.100 require a lessor to include, within or as an attachment to each contract to lease target housing, a statement disclosing 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, before a lessee is obligated under the contract to lease target housing.

32. Count 1: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 952 West 34th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

33. Count 2: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 814 East 46th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

34. Count 3: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 3309 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

35. Count 4: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 3116 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

36. Count 5: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 2531 North Broadway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

37. Count 6: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at

3527 College Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

38. Count 7: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 1101 Fall Creek Parkway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

39. Count 8: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 3252 Nicholas Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

40. Count 9: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 3033 North Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

41. Count 10: Respondent failed to include, within or as an attachment to the contract, 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 before the lessee at 2516 Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

42. Respondent's failure to include, within or as an attachment to each contract, 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 before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 30 through 41 above, constitutes ten violations of 40 C.F.R. § 745.113(b)(2), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 11-20: Failure to Include a List of Records in Rental Contracts:
40 C.F.R. Part § 745.113(b)(3)**

43. Paragraphs 1 through 29 of this Complaint are incorporated here by reference.

44. 40 C.F.R. Part § 745.113(b)(3) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before a lessee is obligated under a contract to lease target housing.

45. Count 11: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 952 West 34th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

46. Count 12: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 814 East 46th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

47. Count 13: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 3309 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

48. Count 14: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 3116 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

49. Count 15: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 2531 North Broadway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

50. Count 16: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 3527 College Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

51. Count 17: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the

lessee at 1101 Fall Creek Parkway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

52. Count 18: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 3252 Nicholas Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

53. Count 19: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 3033 North Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

54. Count 20: Respondent failed to include, within or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 2516 Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

55. Respondent's failure to include, within or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 43 through 54, above, constitutes ten violations of 40 C.F.R.

§ 745.113(b)(3), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 21-30: Failure to Include Statement of Receipt and Lead Hazard
Information Pamphlet in Rental Contracts:
40 C.F.R. § 745.113(b)(4)**

56. Paragraphs 1 through 29 of this Complaint are incorporated here by reference.

57. 40 C.F.R. § 745.113(b)(4) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to the 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 before the lessee is obligated under a contract to lease target housing.

58. Count 21: Respondent failed to include, within or as an attachment to the 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 before the lessee at 952 West 34th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

59. Count 22: Respondent failed to include, within or as an attachment to the 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 before the lessee at 814 East 46th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

60. Count 23: Respondent failed to include, within or as an attachment to the 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 before the lessee at 3309 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

61. Count 24: Respondent failed to include, within or as an attachment to the 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 before the lessee at 3116 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

62. Count 25: Respondent failed to include, within or as an attachment to the 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 before the lessee at 2531 North Broadway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

63. Count 26: Respondent failed to include, within or as an attachment to the 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 before the lessee at 3527 College Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

64. Count 27: Respondent failed to include, within or as an attachment to the 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 before the lessee at 1101 Fall Creek Parkway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

65. Count 28: Respondent failed to include, within or as an attachment to the 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 before the lessee at

3252 Nicholas Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

66. Count 29: Respondent failed to include, within or as an attachment to the 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 before the lessee at 3033 North Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

67. Count 30: Respondent failed to include, within or as an attachment to the 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 before the lessee at 2516 Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

68. Respondent's failure to include, within or as an attachment to the 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 before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraphs 56 through 67, above, constitutes ten violations of 40 C.F.R. § 745.113(b)(4), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 31-40: Failure to Include Certifying Signatures in Rental Contracts:
40 C.F.R. § 745.113(b)(6)**

69. Paragraphs 1 through 29 of this Complaint are incorporated here by reference.

70. 40 C.F.R. § 745.113(b)(6) and 40 C.F.R. § 745.100 require the lessor to include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to

the accuracy of their statements to the best of their knowledge along with the dates of signature before the lessee is obligated under a contract to lease target housing.

71. Count 31: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 952 West 34th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

72. Count 32: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 814 East 46th Street, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

73. Count 33: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 3309 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

74. Count 34: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 3116 Boulevard Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

75. Count 35: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 2531 North Broadway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

76. Count 36: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 3527 College Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

77. Count 37: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 1101 Fall Creek Parkway, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

78. Count 38: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 3252 Nicholas Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

79. Count 39: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 3033 North Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

80. Count 40: Respondent did not include, within or as an attachment to the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements along with the dates of such signature before the lessee at 2516 Park Avenue, Indianapolis, Indiana, was obligated under the contract referenced in paragraph 20, above.

81. Respondent's failure to include, within or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the dates of such signature before the lessees were obligated under the contracts for each of the leasing

transactions referenced in paragraphs 69 through 80, above, constitutes ten violations of 40 C.F.R. § 745.113(b)(6), 40 C.F.R. § 745.100, 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

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 assessment of a civil penalty under TSCA § 16, 15 U.S.C. § 2615, in the maximum amount of \$10,000 for each violation of TSCA § 409, 15 U.S.C. § 2689. This maximum penalty amount has been adjusted to \$11,000 per violation under the Civil Monetary Penalty Inflation Adjustment Act and its implementing regulations for violations occurring after July 28, 1997, 31 U.S.C. § 3701 and 62 Fed. Reg. 35038 (1997).

For purposes of determining the amount of civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires U.S. 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.

The U.S. EPA calculates penalties through the application of U.S. EPA's "Section 1018-Disclosure Rule Enforcement Response Policy," dated February 2000 (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 or not to lease the

housing or take appropriate measures to protect against lead-based paint hazards. The most severe consequence of failing to disclose this information is a greater likelihood that a child will be exposed to lead-based paint hazards, and eventually be poisoned by lead.

Factors relevant to assessing an appropriate penalty include evidence demonstrating the presence of young children or pregnant women in these units at the time of the violation, information pertaining to a Respondent's ability to pay a civil administrative penalty, and any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has 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 paragraphs 24 to 28, above, Respondent was asked to advise U.S. EPA of any factors Respondent thought U.S. EPA should consider before issuing the complaint and, if Respondent believed there were financial factors which bore on Respondent's ability to pay a penalty, to provide U.S. EPA with specific financial documents. Respondent has not provided any such information.

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

COUNTS 1 to 10

42 U.S.C. § 4852d	
40 C.F.R. § 745.113(b)(2).....	\$12,540

COUNTS 11 to 20

42 U.S.C. § 4852d	
40 C.F.R. § 745.113(b)(3).....	\$4,180

COUNTS 21 to 30

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$8,360

COUNTS 31 to 40

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$2,090

Proposed Gravity-Based Civil Penalty.....\$27,170

Rules Governing this Proceeding

The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (Consolidated Rules), at 40 C.F.R. Part 22, govern this civil administrative penalty proceeding. Enclosed with this complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends 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, Illinois 60604

Respondent 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 Cynthia A. King to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. King at (312) 886-6831. Her address is:

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

Penalty Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America" and by delivering the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

Respondent must include, within or as an attachment to the check, the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk, Ms. King, and to:

Terence Bonace (DT-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Opportunity to Request a Hearing

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in their answer, as described below.

Answer

Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that Respondent is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above, and must serve copies of the written answer with Cynthia A. King at the address specified above. If Respondent chooses to file a written answer to the complaint, Respondent must do so within 30 calendar days after receiving the complaint. 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.

Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitutes grounds of defense;
- b. the facts that the Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

If Respondent does 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 Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent 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 U.S. EPA under Section 22.27(c) of the Consolidated Rules.

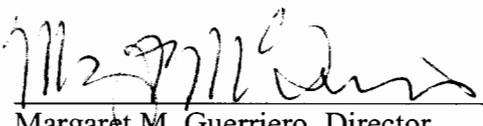
Settlement Conference

Whether or not Respondent requests a hearing, Respondent 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, Respondent may contact Terence Bonace, at the address above or you may telephone him at (312) 886-3387.

Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. The U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with TSCA and any other applicable Federal, state, or local law.

By: 
Margaret M. Guerriero, Director
Land and Chemicals Division

Dated Aug 13, 2007

TSCA-05-2007-0013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Complaint involving Edward L. Murray, was filed on August 16, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 1562 3198, a copy of the original to the Respondents:

Edward L. Murray, Jr.
9410 Mercury Drive
Indianapolis, Indiana 46227

and forwarded copies (intra-Agency) to:

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



Elizabeth Lytle
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **ESCA-05-2007-0013**