



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

September 29, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 2560 0002 7737 4074

Mr. Greg Oehler
President
Gillespie Realty
502 East Main Street
Fredericksburg, TX 78624-4640

Re: Complaint and Notice of Opportunity for Hearing
Docket No. TSCA-06-2008-6094

Dear Mr. Oehler:

Enclosed is a Complaint and Notice of Opportunity for Hearing (Complaint) issued to Gillespie Realty pursuant to the Toxic Substances Control Act (TSCA), as amended. This Complaint is based on our review of the documents submitted by Gillespie Realty to determine compliance with the Lead-Based Paint Real Estate Notification and Disclosure Rule. It is alleged that Gillespie Realty failed to comply with the provisions of TSCA. Based on these violations, a penalty of \$2,330 is proposed.

Please refer to Section IV of the Complaint entitled "Notice of Opportunity to Request a Hearing" which requires your response to the Complaint within 30 days of its receipt. If a response is not submitted within 30 days, a Default Order may be issued for full payment of the penalty within 60 days.

Please note that according to the Disclosure Rule Enforcement Response Policy, "EPA may adjust the proposed penalty downward by up to 95% if the violator provides EPA with appropriate documentation that clearly demonstrates that the target housing is found by a certified inspector to have been lead-based paint free at the time of the alleged violation." Guidelines are in the Texas Department of State Health Services Information Sheet.

The following documents are enclosed to assist you in understanding the Complaint:

1. 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; Final Rule, 40 C.F.R. Part 22
2. The Section 1018 - Disclosure Rule Enforcement Response Policy, December 2007
3. Texas Department of State Health Services Information Sheet

Internet Address (URL) • <http://www.epa.gov>

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If you have any questions, please contact Mrs. Pat Weatherly, of my staff, in writing at the above address or by telephone at (214) 665-2165.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins", written over the typed name.

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

FILED

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	TSCA-06-2008-6094
	§	
GILLESPIE REALTY	§	COMPLAINT
FREDERICKSBURG, TEXAS	§	AND
	§	NOTICE OF OPPORTUNITY
RESPONDENT	§	FOR HEARING

SECTION I
PRELIMINARY STATEMENT

This Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to Section 16 of the Toxic Substances Control Act, as amended (TSCA), 15 U.S.C. § 2615.

The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, U.S. Environmental Protection Agency (EPA), Region 6, the person to whom the authority has been delegated to issue such Complaints in the States that comprise Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Complainant will show that Gillespie Realty (Respondent) has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the Real Estate Notification and Disclosure Rule (Disclosure Rule) requirements of 40 C.F.R. Part 745, Subpart F, a rule promulgated under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 et seq.

SECTION II
ALLEGATIONS

1. EPA has jurisdiction of this matter under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 C.F.R. Part 745, Subpart F.
2. Respondent is Gillespie Realty, 502 East Main Street, Fredericksburg, Texas 78624-4616.
3. Respondent is in the business of selling housing, which was constructed prior to 1978, which is defined as target housing within the meaning of 40 C.F.R. § 745.103.
4. Respondent is a party who enters into a contract with a seller or lessor, for the purpose of selling or leasing target housing and is therefore an "agent" as defined in 40 C.F.R. § 745.103.
5. On or about August 22, 2007, EPA conducted an inspection of Respondent to determine compliance with the Disclosure Rule.
6. On or about August 22, 2007, EPA Inspector Joe Steadham presented his EPA Inspector credentials to Greg Oehler, representative of Respondent.
7. On or about August 22, 2007, Greg Oehler, representative of Respondent, signed EPA Form 7740-3 for 1018, Notice of Inspection, thereby certifying voluntary consent for EPA to review and make copies of real estate notification and disclosure forms and any other documents relating to EPA's ability to determine compliance with the Disclosure Rule.
8. On or about December 5, 2005, Respondent was an agent for the sale of target housing at 408 East Schubert Street, Fredericksburg, Texas 78624-4340.

9. On or about August 3, 2007, Respondent was an agent for the sale of target housing at 206 South Lincoln Street, Fredericksburg, Texas 78624-4132.

COUNT I

10. Paragraphs 1 through 9 are realleged and incorporated herein by reference.

11. 40 C.F.R. § 745.113(a)(4) requires the agent to include, in the contract to sell target housing, an attachment containing a statement by the purchaser affirming receipt of the lead hazard information pamphlet required under 15 U.S.C. 2696.

12. Respondent failed to attach such a statement in the contracts listed in Paragraphs 8 and 9.

13. Respondent's failure to include such a statement in accordance with 40 C.F.R. § 745.113(a)(4) constitutes two violations of Section 409 of TSCA.

COUNT II

14. Paragraphs 1 through 9 are realleged and incorporated herein by reference.

15. Pursuant to 40 C.F.R. § 745.110(a), an agent for the sale of target housing must permit the purchaser a ten-day period to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint before the purchaser is obligated under a contract to purchase target housing.

16. Respondent did not allow the purchaser the opportunity to conduct a risk assessment or inspection of the target housing within a ten-day period to determine the presence

of lead-based paint before the purchaser became obligated under a contract to purchase the target housing in the contract listed in Paragraph 8.

17. Respondent's failure to permit the risk assessment or inspection in accordance with 40 C.F.R. § 745.110(a) constitutes one violation of Section 409 of TSCA.

COUNT III

18. Paragraphs 1 through 9 are realleged and incorporated herein by reference.

19. 40 C.F.R. § 745.113(a)(5) requires the agent to include as an attachment to the contract to sell target housing, a statement by the purchaser, indicating that the purchaser has either received the opportunity to conduct a risk assessment or inspection, or waived such an opportunity.

20. Respondent failed to attach to the contract to sell target housing such a statement from the purchaser for the contract listed in Paragraph 8.

21. Respondent's failure to attach such a statement from the purchaser in accordance with 40 C.F.R. § 745.113(a)(5) constitutes one violation of Section 409 of TSCA.

SECTION III PROPOSED CIVIL PENALTY

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and 40 C.F.R. § 745.118 authorize the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615. Pursuant to 40 C.F.R. § 745.118(f), the penalty assessed for each violation shall not exceed \$11,000 (for violations occurring after July 28, 1997).

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 factors as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the statutory factors enumerated above and EPA's "Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy," dated December 2007, a copy of which is enclosed. This response policy provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Given the facts alleged in this Complaint and the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint as shown below.

COUNT I

40 C.F.R. § 745.113(a)(4)					
Level 4	Minor Extent	X 2 @	\$520.00	each	\$1,040.00
Subtotal					\$1,040.00

COUNT II

40 C.F.R. § 745.110(a)					
Level 3	Minor Extent	X 1 @	\$770.00	each	\$ 770.00
Subtotal					\$770.00

COUNT III

40 C.F.R. § 745.113(a)(5)					
Level 4	Minor Extent	X 1 @	\$520.00	each	\$ 520.00
Subtotal					\$520.00

Total Proposed Gravity-Based Penalty \$2,330.00

Payment of the total amount of \$2,330.00 may be made by certified or cashier's check

payable to the Treasurer, United States of America, and remitted to:

U.S. EPA
 Region 6
 P.O. Box 371099M
 Pittsburgh, PA 15251-7099

The Docket No. TSCA-06-2008-6094 should be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notice of such payment, including a copy of the cashier's or certified check to the following:

Mrs. Pat Weatherly
 Mail Code 6EN-HM
 U.S. Environmental Protection Agency
 1445 Ross Avenue, Suite 1200
 Dallas, TX 75202-2733

Your adherence to these procedures will ensure proper credit when payment is received.

SECTION IV
NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), you (the Respondent) have the right to request a formal hearing within 30 days after the Complaint is served as described at 40 C.F.R. § 22.14(a)(6), if you want to contest any material fact set forth in this Complaint or the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice.

You must file a written Answer within 30 days after receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice (40 C.F.R. § 22.15(b)) to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegations in this Complaint will constitute an admission of the undenied allegation. The Answer shall also state the circumstances and argument, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. The Answer must be sent to:

Regional Hearing Clerk
Mail Code 6RC-D
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

In addition, please send a copy of the Answer and all other documents that you file in this action to Mrs. Pat Weatherly at the above address.

As indicated in 40 C.F.R. § 22.17, if you fail to file a written answer within 30 days of service of this Complaint, you may be deemed to have admitted all allegations made in this Complaint and waived your right to a hearing under TSCA. A Default Order may thereafter be issued by the Presiding Officer, and the civil penalty proposed herein shall become due and payable without further proceedings 60 days after a Final Default Order is issued. Upon issuance of the Final Default Order, the Respondent must immediately comply with the Order provisions in the Complaint.

Respondent is further informed that the 40 C.F.R. Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

SECTION V
SETTLEMENT CONFERENCE

Whether or not you request a formal hearing, you may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, contact Mrs. Weatherly at the above address or call at 214-665-2165.

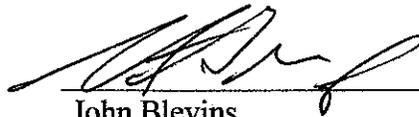
Please note that a request for an informal settlement conference does not extend the 30-day period during which you must submit a written answer and if you so desire, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Please be advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 C.F.R. § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Administrator, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference, nor requested a hearing within the 30-day time period, the above penalty may be assessed without further proceedings, in which case you will be notified that the penalty has become due and payable without further proceedings 60 days after a Final Order is issued upon default.

Date: _____

9-29-08



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Wells Fargo Bank Tower, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint along with EPA's "Section 1018 - Disclosure Rule Enforcement Response Policy," dated December 2007, and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 2560 0002 7737 4074

Mr. Greg Oehler
President
Gillespie Realty
502 East Main Street
Fredericksburg, TX 78624-4616

Date: 9-30-08

Pat Weatherly
Pat Weatherly