



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

REPLY TO THE ATTENTION OF:

C-14J

February 17, 2012

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., Mail Code 1900L
Washington, D.C. 20460

Re: In the Matter of: Cindy Draher.
Docket No. TSCA-05-2012-0001.

Dear Judge Biro:

Today I filed with the Regional Hearing Clerk COMPLAINT PREHEARING EXCHANGE for this civil administrative action, pursuant to your Order, dated January 11, 2012. Enclosed, please find a copy for your review. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Trevino".

Jeffery M. Trevino
Associate Regional Counsel

Enclosure

cc: LaDawn Whitehead
Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 W. Jackson Boulevard (E-19J)
Chicago IL 60604-3590

Archie W. Skidmore
Skidmore & Associates
PNC Center
One Cascade Plaza, 12th Floor
Akron, Ohio 44308

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

In the Matter of)
)
Cindy Draher,) Docket No. TSCA-05-2012-0001
)
Respondent.)

COMPLAINANT PREHEARING EXCHANGE

Complainant hereby files its Prehearing Exchange for this civil administrative action pursuant to the Court's Prehearing Order, dated January 11, 2012.

I. Prospective Fact Witnesses

- A. William Gomora, Multi-Program Inspector
Pesticides & Toxics Compliance Section
Chemical Management Branch
Land and Chemicals Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (LC-8J)
Chicago, IL 60604-3590
Tel. No. (312) 886-6016

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PROTECTION AGENCY

Mr. Gomora, fact witness, will testify to his educational background, employment experience, his Inspection and Inspection Report, dated June 24, 2009, for C & D Properties, 99 North College Street, Akron, Ohio, 44304, ("the Inspection and Inspection Report") and the critical factual allegations in the following numbered paragraphs of the complaint: 3, 15, 17, 19, 20, 21, 22, 23, 24, 25, 29, 32-36, 39, 42, 45-48, 52-53, 56, 59, 62, 65-67, 70-72, 75, 78, and, 81-84.

Complainant alleged Respondent failed to comply with the regulations at 40 C.F.R. § 745.113(b), as well as 15 U.S.C. § 2689 and 42 U.S.C. § 4852d(b)(5). Mr. Gomora will provide the court with testimony about his Inspection and Inspection Report and the critical factual allegations in the following numbered paragraphs of the complaint: 3, 15, 17, 19, 20, 21, 22, 23, 24, 25, 29, 32-36, 39, 42, 45-48, 52-53, 56, 59, 62, 65-67, 70-72, 75, 78, and, 81-84. His testimony will include facts found and collected during his Inspection and included in his Inspection Report, facts for associated documents and exhibits, and facts for the critical factual allegations of the complaint.

B. Julie Morris
Team Leader
Pesticides & Toxics Compliance Section
Chemical Management Branch
Land and Chemicals Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (LC-8J)
Chicago, IL 60604-3590
(312) 886-0863

Ms. Morris, a fact witness, will testify to her educational background, employment experience, the documents of the Inspection and Inspection Report, and the critical factual allegations in the following numbered paragraphs of the complaint: 3, 15, 17, 19, 20, 21, 22, 23, 24, 25, 29, 32-36, 39, 42, 45-48, 52-53, 56, 59, 62, 65-67, 70-72, 75, 78, and, 81-84.

Complainant alleged Respondent failed to comply with the regulations at 40 C.F.R. § 745.113(b), as well as 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5), and proposed a civil penalty of \$37,770.00. Ms. Morris will provide the court with testimony about the Inspection and Inspection Report and the critical factual allegations in the following numbered paragraphs of the complaint: 3, 15, 17, 19, 20, 21, 22, 23, 24, 25, 29, 32-36, 39, 42, 45-48, 52-53, 56, 59, 62, 65-67, 70-72, 75, 78, and, 81-84. Her testimony will include facts found and collected during the Inspection and included in the Inspection Report, facts for associated documents and exhibits, facts for the critical factual allegations of the complaint, facts to explain the relevant penalty factors of section 16 of TSCA, 15 U.S.C. § 2615, facts to explain the U.S. EPA Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007, (“the Penalty Policy”), and facts to demonstrate how Complainant applied the critical factual allegations of the Complaint to the Penalty Policy to propose an appropriate civil penalty of \$37,700.00.

II. Documents and Exhibits

- A. U.S. Environmental Protection Agency Report of Inspection to Determine Compliance with Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Regulations Promulgated Thereunder, for C & D Properties, 99 North College Street, Akron, Ohio, dated June 24, 2009, with Attachments A - J. (Complainant Exhibit No. 1).
- B. C & D Properties Letter, dated July 30, 2009. (Complainant Exhibit No. 2).
- C. U.S. EPA Information Request to Cindy Draher, dated February 18, 2010. (Complainant Exhibit No. 3).

- D. Cindy Draher Response, dated April 10, 2010, to U.S. EPA Information Request. (Complainant Exhibit No. 4).
- E. Dun & Bradstreet Information Reports for C & D Properties, dated July 21, 2010. (Complainant Exhibit No. 5).
- F. Dun & Bradstreet Information Reports for C & D Properties, dated April 7, 2011. (Complainant Exhibit No. 6).
- G. U.S. EPA Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007. ("The Penalty Policy"). (Complainant Exhibit No. 7).
- H. U.S. EPA Penalty Calculation for Cindy Draher. One (1) page. (Complainant Exhibit No. 8).
- I. U.S. EPA Pre-Filing Notice to Cindy Draher, dated July 13, 2011. (Complainant Exhibit No. 9).

III. Desired or Required Hearing Location

Complainant prefers the Court hold the hearing in Chicago, Illinois, as provided by sections 22.21(d) and 22.19(d) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("the Consolidated Rules"), 40 C.F.R. §§ 22.21(d) and 22.19(d).

However, if the Court chooses to hold the hearing at a suitable location in the county where the Respondent resides (Summit County, Ohio), or conducts the business which the hearing concerns (Summit, County, Ohio), Complainant would not object.

Complainant requests approximately four (4) hours to complete its direct-examination of its witnesses for its case-in-chief.

IV. Responses to Specific Requests of the Court

- 1. A brief narrative statement, and a copy of any supporting documents, explaining in detail the factual and/or legal bases for the allegations in Paragraphs 29, 32-36, 39, 42, 45-48, 51-53, 56, 62, 65-67, 70-72, 75, 78, and 81-84 of the Complaint.

RESPONSE: Brief Narrative Statement

The Complaint alleged Respondent failed to comply with the regulations at 40 C.F.R. § 745.113(b), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5), and proposed a civil penalty of \$37,770.00. Complainant witness

testimony and attached exhibits will demonstrate Respondent leased to lessors regulated rental apartments, but failed to provide those lessors lead notice and information required by the regulations at 40 C.F.R. § 745.113(b), and in violation of 40 C.F.R. § 745.113(b), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5), as alleged in the critical factual allegations in the following numbered paragraphs of the complaint: 29, 32-36, 39, 42, 45-48, 51-53, 56, 62, 65-67, 70-72, 75, 78, and 81-84 of the Complaint.

Please see attached Complainant Exhibit Nos. 1 - 4.

2. A copy of the documents referred to in Paragraphs 19, 22, and 23 of the Complaint.

RESPONSE: Please see Complainant Exhibit Nos. 1 - 4.

3. A copy of the leases referred to in Paragraph 24 of the Complaint.

RESPONSE: Please see Complainant Exhibit Nos. 1 - 4.

4. A copy of any reports, notes, or other pertinent documentation produced as a result of the EPA inspection referred to in Paragraph 21 of the Complaint.

RESPONSE: Please see Complainant Exhibit No. 1, but ostensibly Complainant Exhibit Nos. 1-9.

5. All factual information and supporting documentation relevant to the assessment of the penalty, a detailed narrative explanation of the proposed penalty addressing relevant penalty factors, and a copy, or a statement of the internet address (URL), of any policy or guidance relied on by Complainant in calculating the proposed penalty, or intended to be relied on if the penalty is adjusted.

RESPONSE: Please see Complainant Exhibit Nos. 1 - 9, but particularly 7 & 8.

Narrative Statement

The Complaint proposed a civil penalty of \$37,700.00 pursuant to section 16 of TSCA, 15 U.S.C. § 2615, and its Penalty Policy. Complainant will provide the court with testimony and exhibits (see Complainant Exhibit Nos. 7 & 8) to explain the statutory penalty factors of section 16 of TSCA, 15 U.S.C. § 2615, and its Penalty Policy, and to demonstrate how Complainant applied the critical facts of the Complaint to the Penalty Policy to propose an appropriate civil penalty of \$37,700.00, and as detailed in Complainant Exhibit No. 8.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JT' with a large loop, positioned above the typed name.

Jeffery M. Trevino
Associate Regional Counsel
Office of Regional Counsel
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590
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BEFORE THE ADMINISTRATOR

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Cindy Draher,) Docket No. TSCA-05-2012-0001
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Respondent.)

Certificate of Service

I hereby certify that today I filed personally with LaDawn Whitehead, Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604-3590, the original document entitled COMPLAINANT PREHEARING EXCHANGE for this civil administrative action and that I issued to the Court and Respondent by first class mail a copy of the original document:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Archie W. Skidmore
Skidmore & Associates
PNC Center
One Cascade Plaza, 12th Floor
Akron, Ohio 44308



Jeffery M. Trevino
Associate Regional Counsel



Dated