



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

**ORDER TO CLARIFY ANSWER AND
CONDUCT SETTLEMENT CONFERENCE**

As you have been previously notified, I am designated to preside over this proceeding. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 through 22.45 (“Rules of Practice”). The Rules of Practice, an informal Practice Manual, and significant decisions issued by the EPA Office of Administrative Law Judges may be found on the Office’s Website at <http://www.epa.gov/oalj>. There, you can also find a Citizen’s Guide that serves as an informal overview and procedural guide for individuals who are not represented by counsel. The parties are strongly advised to familiarize themselves with these materials.

This proceeding arises under Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency (“EPA”) Region 5 (“Complainant”) initiated this proceeding on October 28, 2011, by filing a Complaint against Ms. Cindy Draher (“Ms. Draher” or “Respondent”). In the Complaint, EPA alleges that Ms. Draher is liable for thirty violations of the lead-based paint disclosure rules codified at 40 C.F.R. § 745.113(b). Ms. Draher filed an Answer to the Complaint on November 23, 2011.

In her Answer, Ms. Draher denies all bases of liability. However, Ms. Draher does not indicate in her Answer whether she wants a hearing in this matter. If Ms. Draher wished to have a hearing before an Administrative Law Judge, Rule of Practice 22.15(b) required her to request that hearing in her Answer. 40 C.F.R. § 22.15(b). Even though Ms. Draher did not request a hearing, the Administrative Law Judge may still hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c); see *Green Thumb Nursery, Inc.*, 6 E.A.D. 782, 789–91 (EAB 1997).

In view of the lack of a request for hearing in Ms. Draher’s Answer, Ms. Draher is directed to file a statement clarifying whether she requests a hearing before an Administrative Law Judge. She shall file this clarification statement on or before January 6, 2012.

Furthermore, EPA policy encourages settlement of a proceeding without the necessity of a formal hearing. 40 C.F.R. § 22.18(b). The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away. If settlement discussions have already been undertaken, the parties are commended for taking the initiative. However, the record does not indicate that the parties have engaged in such discussions.

The parties are directed to hold a settlement conference on or before **January 20, 2012**, to attempt to reach an amicable resolution of this matter. **Complainant shall file a status report regarding the conference and the status of settlement on or before **January 27, 2012**.**

The signed original, and one copy, of any statements, status reports, or other documents shall be filed with the Regional Hearing Clerk by mailing them to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

A document is “filed” when the Regional Hearing Clerk *receives* it. A copy must also be served on the other party. In addition, a copy shall be sent to the undersigned Administrative Law Judge, addressed as follows:

If sent by the U.S. Postal Service (USPS):

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, DC 20460

If hand-delivered or sent by a non-USPS delivery service, such as Federal Express or UPS, that x-rays its packages as part of its routine security procedures:

The Honorable Susan L. Biro, Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

The parties are encouraged to send a courtesy copy to the Office of Administrative Law Judges by facsimile or email, in addition to the mailed hard copy, as physical mail delivery is

often subject to significant delay. The facsimile number for the Office of Administrative Law Judges is (202) 565-0044, and the email address is oyaljfilings@epa.gov. A signed certificate of service must be attached to all filed documents.

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Regional Hearing Clerk.

If the parties have any questions, they are encouraged to refer to the Citizen's Guide and the Practice Manual available at the Office of Administrative Law Judges' Website at <http://www.epa.gov/oyalj>. Telephone contact may be made with my legal assistant, Maria Whiting-Beale, at (202) 564-6259, to ask whether a document has been received or issued. Telephone contact may be made with my staff attorney, Ed Kulschinsky, Esq., at (202) 564-4133, for other procedural questions.

SO ORDERED.



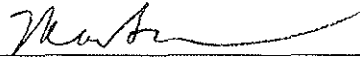
Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency

Dated: December 22, 2012
Washington, D.C.

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

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order Clarify Answer and Conduct Settlement Conference**, issued by Barbara A. Gunning, Administrative Law Judge, in Docket No. TSCA-05-2012-0001, were sent to the following parties on this 22nd day of December 2011, in the manner indicated:



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V, MC-E-19J
77 West Jackson Blvd.,
Chicago, IL 60604-3590

Copy by Pouch Mail to:

Jeffery Trevino, Esq.
Associate Regional Counsel
U.S. EPA / Region V
77 West Jackson Blvd.
Chicago, IL 60604-3590

Copy by Regular Mail to:

Archie W. Skidmore, Esq.
Skidmore & Associates
One Cascade Plaze, 12th Floor
Akron, OH 44308

**Dated: December 22, 2011
Washington, DC**