COPY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
http://www.epa.gov/region08

Ref: 8ENF-AT

SEP - 1 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Conrad Guerrero
5 Temple Drive
Pueblo, CO 81005

Re: Penalty Complaint and Notice of Opportunity for Request a Hearing

Dear Mr. Guerrero:

Enclosed is an amended administrative complaint for violations of the Toxic Substances Control Act. Please read this complaint soon and carefully, since it describes your rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalty. Also enclosed is a copy of the Rules of Practice that govern these proceedings and, in case your company meets the criteria, an information sheet about the Small Business Regulatory Fairness Act.

You are required to take action in less than 30 days to avoid the possibility of having a default judgment entered against you that could impose the penalty amount proposed in the complaint.

Whether or not you request a hearing, we encourage meeting with us to discuss the alleged violations and try to negotiate a settlement. To arrange for such a conference, contact the attorney mentioned below. Requesting such a conference does not extend the 30 day period during which a request for hearing must be submitted.

For questions on this matter, the most knowledgeable people on my staff are, for technical questions, Brenda South, Environmental Protection Specialist, who can be reached at (303) 312-7076 and, for legal questions, Alicia N. Hoegh, Enforcement Attorney, who can be reached at (303) 312-6876. You can write to either of them at the address on the letterhead above.

We urge your prompt attention to this matter.

Sincerely,

Martin Hestmark, Director
Technical Enforcement Program

Enclosures (6)

cc: Steve Fine, CDPHE

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. TSCA-08-2004-0002

2004 SEP -1 PM 3:40

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:	)	
	)	
	)	**PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**
Conrad Guerrero,	)	
	)	
	)	
Respondent.	)	

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act ("Residential Lead Hazard Act") and the Toxic Substances Control Act ("TSCA"). 42 U.S.C. § 4851 et seq, and 15 U.S.C. § 2601 et seq. EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the Code of Federal Regulations and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA. The rules for this proceeding are 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 ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has failed to comply with federal regulations regarding the disclosure of lead-based paint hazards, found at 40 C.F.R. part 745, subpart F and, therefore, is in violation of the Residential Lead Hazard Act and TSCA. As a result, EPA proposes the assessment of a civil penalty, as more fully explained below. 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to contest (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the Complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (999 18th Street, Suite 300, Denver, CO 80202) not more than 30 days after receiving this Complaint and provide a copy to the enforcement attorney listed below. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and

your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process, including how extensions of time to pay can be obtained.

SETTLEMENT NEGOTIATIONS

7. EPA encourages settlement discussions through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Alicia N. Hoegh, Enforcement Attorney, at 1-800-227-8917; extension 6876 or at the address below. **Please note that contacting the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for either paying the penalty or filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Complaint:

8. EPA regulations require, among other things, that an owner of housing constructed before 1978 shall, prior to obligating under a contract to lease or rent the housing provide or include in or attach to the leasing contract, (1) an EPA-approved lead hazard information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence), (4) a list of any records or reports available to the owner related to lead-based paint or hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she received the above information, and (6) signatures (dated) by both parties certifying the accuracy of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).

9. Between at least June, 1998 and November, 2002, Respondent owned Apartment 112, a residential apartment unit in the Skyway Condo complex, located at 935 Saturn Drive, Colorado Springs, Colorado 80906.

10. Apartment 112 is contained in a building which was constructed prior to 1978.

11. On February 28, 2001, Respondent entered into written lease agreement (lease contract) with James and Laura Beasley (Beasleys) for the rental of Apartment 112.

12. On February 7, 2002, Respondent entered into written lease agreement (lease contract) with James and Laura Beasley (Beasleys) for the rental of Apartment 112. At this time, Laura Beasley was pregnant.

Counts 1 & 2

13. Respondent failed to provide an EPA-approved lead hazard information pamphlet prior to entering into either lease contract of Apartment 112 with the Beasleys as described above.

14. Respondent's failure to provide such a pamphlet before the Beasleys were obligated under each lease contract constitutes two violations of the regulations and therefore the statutes. 40 C.F.R § 745.107(a)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

Counts 3 & 4

15. Respondent failed to include a lead warning statement within or with each lease contract described above before the renters/lessees were obligated.

16. Respondent's failure to include a warning statement in either lease contract constitutes two violations of the regulations and therefore the statutes. 40 C.F.R § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

Counts 5 & 6

17. Respondent failed to include a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such presence), within or with each lease contract described above before the renters/lessees were obligated.

18. Respondent's failure to include such a statement in either contract constitutes two violations of the regulations and therefore the statutes. 40 C.F.R § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

Count 7 & 8

19. Respondent failed to include a list of any records or reports available to the owner related to lead-based paint or hazards (or a statement that no such records exist) within or with each lease contract described above before the renters/lessees were obligated.

20. Respondent's failure to include such a list or such a statement in either contract constitutes two violations of the regulations and therefore the statutes. 40 C.F.R § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

Counts 9 & 10

21. Respondent failed to include a statement by the renter/lessee that they received the information described in the counts above.

22. Respondent's failure to include such statement in either contract constitutes two violations of the regulations and therefore the statutes. 40 C.F.R § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

PROPOSED CIVIL PENALTY

23. The Residential Lead Hazard Act and TSCA, as amended by subsequent penalty adjustment law, authorize the assessment of a civil penalty under of up to $11,000 for each violation of the EPA regulations. In determining the amount of any civil penalty assessed, EPA is required 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. EPA proposes that a penalty of $3,784 be assessed against Respondent for the violations alleged above.

24. EPA calculates penalties through the application of a national enforcement response policy that provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the 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 to lease the housing or take appropriate measures to protect against lead-based paint hazards. The proposed penalty was calculated by using the Section 1018 - Disclosure Rule Enforcement Response Policy (ERP), a copy of which is enclosed.

Nature, Circumstances, Extent and Gravity of Violations

The nature of the violations is hazard assessment, as discussed on page 9 of the ERP. The circumstance level of the violations ranged from level 1 to level 5, based on the circumstance level matrix on page B-1 of the ERP. The extent level of the violations was based on the extent level matrix on page B-4 of the ERP. The extent level was minor for Counts 1, 3, 5, 7, and 9, since at the time of the violation there were no children under the age of 6 or

pregnant women in the target housing. The extent level was major for Counts 2, 4, 6, 8, and 10, since at the time of the violation there was a pregnant woman in the target housing. Using the gravity-based penalty matrix on page B-4 of the ERP, which combines the circumstance level and extent level for each Count, the total penalty amount is $37,840.

Statutory Factors

Ability to pay/ability to continue in business: EPA does not have any information on the Respondent's ability to pay. No adjustment has been made using this factor.

History of prior violations: This factor only adjusts the penalty upward. No history of prior violations found, so no adjustment has been made using this factor.

Degree of culpability: Level II. The Respondent should have had sufficient knowledge to recognize the hazard created by his conduct, or significant control over the situation to avoid committing the violation. No adjustment has been made using this factor.

Other factors as justice may require:

No adjustments made at this time regarding these factors, except for the following:

Adjustment for small independent owners/lessors: Since Respondent appears to own fewer than four rental properties, EPA has reduced the penalty by 90%.

The total adjusted penalty amount is $3,784.

25. The ALJ is not bound by EPA's penalty policy nor the penalty proposed in the Complaint and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

To discuss settlement or ask any questions you may have about this process, please contact Alicia N. Hoegh, Enforcement Attorney, at the number or address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant

Date: 9/1/04 By: _____
Martin Hestmark, Director
Technical Enforcement Program

Date: 9/1/04 By: _____
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

Date: 9/1/04 _____ for AWH
Alicia N. Hoegh, Enforcement Attorney
Legal Enforcement Program
U.S.E.P.A. Region 8
999 18th Street, Suite 500 (ENF-L)
Denver, CO 80202
1.800.227.8917; ext. 6876

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, DOCKET NO.: TSCA-08-2004-0002** was filed with the Regional Hearing Clerk on September 1, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Alicia Hoegh, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 1, 2004, to:

Conrad Guerrero
5 Temple Drive
Pueblo, CO 81005

Andrea Reed

September 1, 2004

Andrea Reed
Secretary