

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of)	
)	
John P. Vidiksis and)	Docket No. TSCA 03-2005-0266
Kathleen E. Vidiksis)	
)	
Respondents)	

Order Regarding Respondent John Vidiksis' Request for Discovery

Respondent John Vidiksis, through Counsel, submitted a letter, dated February 20, 2006, seeking “items for [the Court’s] consideration as appropriate discovery tasks ...” The letter asserts that, because the Complaint alternatively pleads that Respondent John Vidiksis failed to inform prospective tenants of the presence of lead *or* failed to disclose his lack of knowledge on that issue, Respondent John Vidiksis would be unable to defend himself. Respondent’s Counsel seeks an order compelling EPA to choose between the grounds for liability.

The letter also refers to the other Respondent in this matter, Kathleen Vidiksis and asserts that joint and several liability “violates TSCA statute’s enforcement provisions.” While John Vidiksis’ counsel does not represent Kathleen Vidiksis, the letter goes on to assert: that Kathleen Vidiksis should be dismissed as a Respondent; that EPA should disclose any evidence of Kathleen Vidiksis’ personal culpability for the alleged violations; and that EPA should be required to acknowledge that its theory of culpability for Kathleen Vidiksis is limited to her part ownership of the dwellings associated with the alleged violations.¹

EPA filed a Response in Opposition to Respondent’s February 20th letter in which it asserted that ordinarily the prehearing exchange operates as a substitute for discovery and that, while the Consolidated Rules of Practice, 40 C.F.R. Part 22, do provide for “[o]ther discovery” such requests are premature if made before the prehearing exchange has occurred.²

¹The letter adds that some of the Counts are time barred and therefore seeks the exact date the Complaint was served on each respondent. It also asserts that EPA has filed separate actions against Dale Realty and Target Realty for the same transactions identified in this Complaint, and for that reason seeks detailed information as to how the penalties were derived for those other actions.

²EPA also notes that, per 40 C.F.R. § 22.19(e), Respondent’s Counsel did not comply with the showing needed where one seeks such “[o]ther discovery” and that it failed to comply with the filing obligations as set forth at §22.5(a) of the Rules. EPA Opposition. (EPA did not

Upon consideration, the Court construes Respondent John Vidiksis' letter as a request for other discovery and denies the same for the reasons advanced in EPA's Opposition.³ While not necessary to discuss at this time, the Court also takes notes that the section of the lead disclosure provisions cited frequently in the counts of the Complaint, 42 U.S.C. § 4852d, merely states that it is a violation *either* to fail to disclose the presence of known lead *or* to indicate that one has no knowledge of the presence of lead. Either theory, if established by a preponderance of the evidence at the hearing, forms a basis for demonstrating a violation and EPA is not restricted to choosing one basis or the other in advance of the hearing. *See also*, 40 C.F.R. § 745.113, which is the regulatory embodiment of the statutory provision.

So Ordered.

William B. Moran
United States Administrative Law Judge

Dated: March 17, 2006

number the pages in its opposition.)

³At the instance of EPA, but with the Court's full agreement, the Court directs that future requests regarding the course of this litigation should be made through the filing of motions and in compliance with the Consolidated Rules of Practice, 40 C.F.R. Part 22.