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Regional Counsel

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IVAN LIEBEN
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415)972-3912

REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

_____)
IN THE MATTER OF)
)
Ralph Hovannisian,)
c/o Professional Man Property Management)
)
Respondent)
_____)

**Docket No. TSCA-09-2008-0001
CONSENT AGREEMENT
AND FINAL ORDER**

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA"), and Mr. Ralph Hovannisian ("Respondent"), agree to settle the enforcement matter initiated by EPA's administrative civil complaint filed on December 12, 2007 ("Complaint"). Respondent consents to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. The Complaint commenced a civil administrative action pursuant to Section 16(a)

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of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) ("TSCA"). Section 16(a) of TSCA and Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d ("Section 1018"), authorize the Administrator of the United States Environmental Protection Agency ("EPA") to issue a civil complaint and assess a civil penalty not to exceed \$10,000 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. That maximum civil penalty has subsequently been raised to \$11,000 per day for each violation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19.

2. Complainant is the Director of the Communities and Ecosystems Division, EPA Region IX, who has been delegated the authority to institute this action.

3. Respondent owns and manages certain residential rental apartment buildings located in Fresno, California, and identified in the Complaint.

4. The office address for Respondent is 1508 West Mineral King Avenue, Visalia, California.

B. RESPONDENT'S ADMISSIONS

5. In accordance with 40 C.F.R. Section 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to contest the allegations contained in the Complaint and (v) waives the right to appeal

the proposed final order contained in this CAFO.

C. CIVIL ADMINISTRATIVE PENALTY

6. In settlement of the violations identified in the Complaint, Respondent shall pay a civil administrative penalty of SIXTEEN THOUSAND DOLLARS (\$16,000). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this Agreement and according to the terms of this Agreement. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

The payment shall be accompanied by a transmittal letter identifying the case name, the docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC 1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Ivan Lieben
Office of Regional Counsel (ORC 2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

7. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other

person to use such payment as a tax deduction, nor claim such payment as a business expense for purposes of taxation.

8. If Respondent fails to pay the assessed civil administrative penalty of \$16,000, as identified in Paragraph 6, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The amount of the stipulated penalty will be TWO HUNDRED DOLLARS (\$200) for each day that the payment is late, up to and including the 15th day; THREE HUNDRED DOLLARS (\$300) for each subsequent day that the payment is late, starting with the 16th day and continuing up to and including the 30th day; and FOUR HUNDRED DOLLARS (\$400) for each subsequent day that the payment is late after the 30th day. Stipulated penalties will be immediately due and payable on the day following the deadline specified in Paragraph 6, together with the initially assessed civil administrative penalty of \$16,000. Failure to pay the civil administrative penalty specified in Paragraph 6 by the deadline specified in that Paragraph may also lead to any or all of the following actions:

a. EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14 & 13.33. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such collection proceeding.

b. The U.S. Government may collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. §§ 13(C) & 13(H).

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c. Pursuant to 40 C.F.R. Section 13.17, EPA may either: (i) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds.

d. Pursuant to 31 U.S.C. Section 3717 and 40 C.F.R. Part 13, the U.S. Government may assess interest, handling charges, penalties and administrative costs against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty specified in Paragraph 6 by the deadline specified in that Paragraph.

i. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. Section 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within sixty (60) days of the effective date of this CAFO.

ii. Handling Charge. Pursuant to 31 U.S.C. Section 3717(e)(1), Respondent shall pay a monthly handling charge of \$15 for any month in which any portion of the assessed penalty is more than 30 days past due.

iii. Penalties & Administrative Costs. If Respondent fails to pay, on a timely basis, the full amount of the assessed penalty, interest, and handling charges, Respondent shall be liable for the United States' enforcement and collection expenses, including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

D. RETENTION OF RIGHTS

9. Execution of this CAFO and compliance with the requirements set forth herein shall constitute full settlement and satisfaction of all civil claims arising from the allegations in the Complaint. In accordance with 40 C.F.R. Section 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the Complaint.

10. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

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E. ATTORNEYS' FEES AND COSTS

11. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding, excluding those fees, costs and/or disbursements addressed in Paragraph 8.

F. EFFECTIVE DATE

12. In accordance with 40 C.F.R. Sections 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

G. BINDING EFFECT

13. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

14. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT:

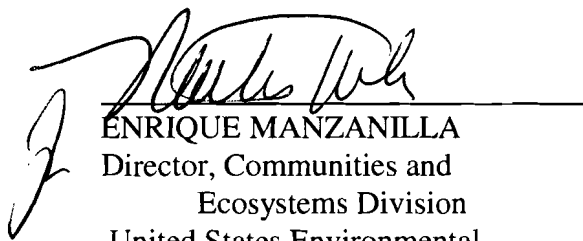
5/2/08
DATE


RALPH HOVANNISIAN

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FOR COMPLAINANT EPA:

6/12/08
DATE

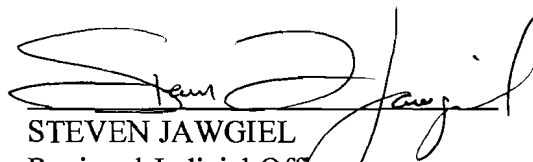

ENRIQUE MANZANILLA
Director, Communities and
Ecosystems Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

II. FINAL ORDER

EPA and the Respondent Mr. Ralph Hovannisian, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2008-0001) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$16,000, in accordance with the terms set forth in the Consent Agreement.

06/17/08
DATE


STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order (“CAFO”),
Docket Number ⁰⁹ TSCA-~~9~~-2008-0001 , was filed this day with the Regional Hearing Clerk, U.S.
EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and
correct copy of the CAFO was sent to the Respondent at the following address, certified mail,
return receipt requested:


Ralph Hovannisian
c/o Professional Man Property Management
1508 West Mineral King Avenue
Visalia, CA 93291

Certified Mail No. 7007-3020-0000-9806-7821



Danielle Carr

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX



Date