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U.S. EPA - Region IX

7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10
11 In the matter of:) Docket No. TSCA-09-2017-0007
12)
13 Haven Homes, Inc.,) CONSENT AGREEMENT
AND FINAL ORDER
14 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

15
16 I. CONSENT AGREEMENT

17 The United States Environmental Protection Agency, Region IX (“EPA”), and Haven
18 Homes, Inc. (the “Respondent”) agree to settle this matter and consent to the entry of this
19 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
20 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative penalty action instituted against Respondent pursuant to
23 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
24 of Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992
25 (“Section 1018”), 42 U.S.C. § 4852d, and federal regulations promulgated to implement Section
26 1018 at 40 C.F.R. Part 745, Subpart F. Violation of Section 1018 through its implementing
27 regulations at 40 C.F.R. Part 745, Subpart F constitutes violation of Section 409 of TSCA, 15
28 U.S.C. § 2689.

1 2. Complainant is the Chief of the Waste and Chemical Section in the Air, Waste, and
2 Toxics Branch of the Enforcement Division in EPA Region IX, who has been duly delegated the
3 authority to bring this action and to sign a consent agreement settling this action.

4 3. Respondent manages residential properties located in Southern California.

5 B. STATUTORY AND REGULATORY BASIS

6 4. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose
7 certain disclosure requirements concerning lead-based paint and/or lead-based paint hazards
8 upon the sale or lease of target housing.

9 5. "Target housing" means any housing constructed prior to 1978, except housing for the
10 elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is
11 expected to reside in such housing) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.

12 6. "Lessor" means any entity that offers target housing for lease, rent or sublease,
13 including but not limited to individuals, partnerships, corporations, trusts, government agencies,
14 housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.

15 7. "Lessee" means any entity that enters into an agreement to lease, rent, or sublease
16 target housing, including but not limited to individuals, partnerships, corporations, trusts,
17 government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. §
18 745.103.

19 8. Each contract to lease target housing shall include a statement by the lessor disclosing
20 the presence of known lead-based paint and/or lead-based paint hazards in the target housing
21 being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based
22 paint hazards. 40 C.F.R. § 745.113(b)(2).

23 9. Each contract to lease target housing shall include a list of any records or reports
24 available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target
25 housing that have been provided to the lessee or indicate that no such records or reports are
26 available. 40 C.F.R. § 745.113(b)(3).

1 10. Each contract to lease target housing shall include a statement by the lessee affirming
2 receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard
3 information pamphlet required under 15 U.S.C. § 2686. 40 C.F.R. § 745.113(b)(4).

4 11. Each contract to lease target housing shall include the signatures of the lessors,
5 agents, and lessees certifying to the accuracy of their statements, to the best of their knowledge,
6 along with the dates of signature. 40 C.F.R. § 745.113(b)(6).

7 12. As provided at 40 C.F.R. § 745.118(e), failure to comply with 40 C.F.R. § 745.113 is
8 a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each such violation
9 shall not be more than \$16,000 for violations occurring after January 12, 2009, but on or before
10 November 2, 2015, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40
11 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Act of 1990,
12 Pub. L. 101-410.

13 C. ALLEGED VIOLATIONS

14 13. EPA has jurisdiction over this matter pursuant to Section 1018.

15 14. At all times relevant to this matter, Respondent was a “lessor” of the residential
16 properties referenced in Paragraph 16, as that term is defined at 40 C.F.R. § 745.103.

17 15. At all times relevant to this matter, the residential properties referenced in Paragraph
18 16 were “target housing,” as that term is defined at 40 C.F.R. § 745.103.

19 16. On or around the dates listed below, Respondent entered into 20 leases of the
20 residential properties listed below for occupancies greater than 100 days or 100 days or less
21 where lease renewals or extensions could occur (collectively, the “Subject Leases”):

<u>Address</u>	<u>Date of Lease</u>
1) 19617 E Bellbrook Street, Covina, CA	December 1, 2014
2) 20439 Malden Street, Winnetka, CA	November 1, 2014
3) 12801 S. Catalina Avenue, Gardena, CA	July 1, 2014
4) 11706 Terra Bella Street, Sylmar, CA	June 1, 2014
5) 19234 Napa Street, Northridge, CA	May 1, 2014
6) 425 Elm Avenue, Inglewood, CA	July 1, 2014
7) 13066 Bradwell Avenue, Sylmar, CA	August 1, 2014
8) 8858 Keokuk Avenue, Canoga Park, CA	October 1, 2014
9) 15450 Archwood Street, Van Nuys, CA	December 1, 2014
10) 11052 Borden Avenue, Pacoima, CA	May 1, 2014
11) 239 E. 56th Street, Long Beach, CA	August 1, 2014

1	12)	922 Lindencliff Street, Torrance, CA	June 1, 2014
	13)	23224 Dalbey Drive, Santa Clarita, CA	August 1, 2014
2	14)	9933 Lull Street Burbank, CA	November 1, 2014
	15)	7477 Encino Avenue - Lake Balboa, CA	June 1, 2014
3	16)	8560 Ventura Canyon Avenue, Panorama City, CA	September 1, 2014
	17)	13165 Filmore Street, Pacoima, CA	December 1, 2014
4	18)	14801 Firmona Avenue Lawndale, CA	September 1, 2014
	19)	922 Lindencliff Street, Torrance, CA	December 1, 2014
5	20)	12438 Garber Street, Pacoima, CA	November 1, 2014

6
7 17. At the time that Respondent entered into each of the Subject Leases, Respondent
8 failed to include in the lease a statement by Respondent disclosing the presence of known lead-
9 based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge
10 of the presence of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. §
11 745.113(b)(2).

12 18. At the time that Respondent entered into each of the Subject Leases, Respondent
13 failed to include in the lease a list of any records or reports available to Respondent pertaining to
14 lead-based paint and/or lead-based paint hazards in the unit that had been provided to the lessee
15 or indicate that no such records or reports are available, as required by 40 C.F.R. § 745.113(b)(3).

16 19. At the time that Respondent entered into each of the Subject Leases, Respondent
17 failed to include in the lease a statement by the lessee affirming receipt of the information set
18 forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required
19 under 15 U.S.C. § 2686, as required by 40 C.F.R. § 745.113(b)(4).

20 20. At the time that Respondent entered into each of the Subject Leases, Respondent
21 failed to include the signature of Respondent and the lessees certifying to the accuracy of their
22 statements, to the best of their knowledge, along with the dates of signature, as required by 40
23 C.F.R. § 745.113(b)(6).

24 21. Each of Respondent's failures to comply with 40 C.F.R. § 745.113, as set forth in
25 Paragraphs 17 through 20, constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. §
26 2689, which can be assessed a penalty of up to \$16,000 per violation for violations occurring
27 after January 12, 2009, but on or before November 2, 2015.

28 **D. RESPONDENT'S ADMISSIONS**

22. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,

1 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
2 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
3 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
4 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
5 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
6 proposed Final Order contained in this CAFO.

7 E. CIVIL ADMINISTRATIVE PENALTY

8 23. In settlement of the violations specifically alleged in Section I.C of this CAFO,
9 Respondent shall pay a civil administrative penalty of ONE HUNDRED AND FORTY-EIGHT
10 THOUSAND, SIX HUNDRED, AND EIGHTEEN DOLLARS (\$148,618). Respondent shall
11 pay this civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty
12 shall be paid by remitting a certified or cashier's check, including the name and docket number
13 of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one
14 of the other methods listed below) and sent as follows:

15 Regular Mail:

16 U.S. Environmental Protection Agency
17 Fines and Penalties
18 Cincinnati Finance Center
19 PO Box 979077
20 St. Louis, MO 63197-9000

21 Wire Transfers:

22 Wire transfers must be sent directly to the Federal Reserve Bank in New
23 York City with the following information:
24 Federal Reserve Bank of New York
25 ABA = 021030004
26 Account = 68010727
27 SWIFT address = FRNYUS33
28 33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

1 ACH (also known as REX or remittance express):
2 Automated Clearinghouse (ACH) for receiving U.S. currency
3 PNC Bank
4 808 17th Street, NW
5 Washington, DC 20074 ABA = 051036706
6 Transaction Code 22 – checking
7 Environmental Protection Agency
8 Account 31006
9 CTX Format

6 On Line Payment:
7 This payment option can be accessed from the information below:
8 www.pay.gov
9 Enter “sfo1.1” in the search field
10 Open form and complete required fields

10 If clarification regarding a particular method of payment remittance is
11 needed, contact the EPA’s Cincinnati Finance Center at (513) 487-2091.

11 A copy of each check, or notification that the payment has been made by one of the other
12 methods listed above, including proof of the date payment was made, shall be sent with a
13 transmittal letter, indicating Respondent’s name, the case title, and docket number, to the
14 following addresses:

15 Regional Hearing Clerk
16 Office of Regional Counsel (ORC-1)
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
19 San Francisco, CA 94105

19 Max Weintraub
20 Waste and Chemical Section
21 Enforcement Division (ENF-2-2)
22 U.S. Environmental Protection Agency, Region IX
23 75 Hawthorne Street
24 San Francisco, CA 94105

22 24. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
23 from Respondent’s federal, state, or local taxes, nor shall Respondent allow any other person to
24 use such payment as a tax deduction.

25 25. If Respondent fails to pay the assessed civil administrative penalty of ONE
26 HUNDRED AND FORTY-EIGHT THOUSAND, SIX HUNDRED, AND EIGHTEEN
27 DOLLARS (\$148,618), as identified in Paragraph 23, by the deadline specified in that Paragraph,
28 then Respondent shall pay a stipulated penalty to EPA of \$500 per day in addition to the assessed

1 penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued
2 stipulated penalties are paid and shall become due and payable upon EPA's written request.
3 Failure to pay the civil administrative penalty specified in Paragraph 23 by the deadline specified
4 in that Paragraph may also lead to any or all of the following actions:

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

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

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

18 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
19 Government may assess interest, administrative handling charges, and nonpayment penalties
20 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
21 civil administrative penalty specified in Paragraph 23 by the deadline specified in that Paragraph.

22 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
23 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
24 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
25 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
26 (30) days of the effective date of this CAFO.

27 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
28 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,

1 based on either actual or average cost incurred (including both direct and indirect costs), for
2 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

3 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(c)(2)
4 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
5 may be assessed on all debts more than ninety (90) days delinquent.

6 F. CERTIFICATION OF COMPLIANCE

7 26. In executing this CAFO, Respondent certifies that it is now fully in compliance with
8 Section 1018 and federal regulations promulgated to implement Section 1018 at 40 C.F.R. Part
9 745, Subpart F.

10 G. RETENTION OF RIGHTS

11 27. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
12 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C
13 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
14 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
15 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
16 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
17 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
18 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

22 H. ATTORNEYS' FEES AND COSTS

23 29. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
24 this proceeding.

25 I. EFFECTIVE DATE

26 30. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
27 effective on the date that the Final Order contained in this CAFO, having been approved and
28 issued by either the Regional Judicial Officer or Regional Administrator, is filed.


1 J. BINDING EFFECT

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

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


8
9
10 FOR RESPONDENT HAVEN HOMES, INC.:

11
12 6/16/2017
13 DATE

14 
15 _____
16 ERIC GUTSHALL
17 President
18 Haven Homes, Inc.

19 FOR COMPLAINANT EPA:

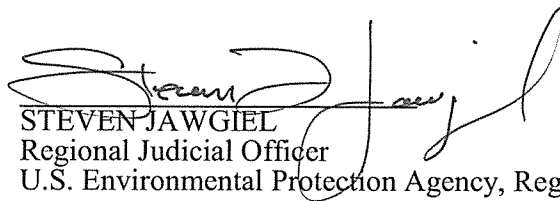
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21
22 7/10/17
23 DATE

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25 _____
26 DOUGLAS K. MCDANIEL
27 Chief, Waste and Chemical Section
28 Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Haven Homes, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2017- 0007) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of ONE
5 HUNDRED AND FORTY-EIGHT THOUSAND, SIX HUNDRED, AND EIGHTEEN
6 DOLLARS (\$148,618), and comply with the terms and conditions set forth in the Consent
7 Agreement.

8
9
10 07/13/17
11 DATE

12 
13 STEVEN JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

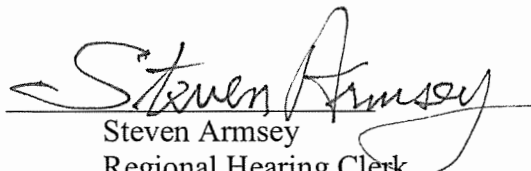
I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order has been filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent by Certified Mail, Return Receipt Requested to:

Eric Gutshall
President
Haven Homes, Inc.
909 N. Sepulveda Blvd, Suite 840
El Segundo, CA 90245
Certified Mail # 70161370 0000 0148 5827

and Hand-Delivered to:

Edgar Coral
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Date: July 14, 2017


Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX