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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

_____)	Docket No. TSCA-09-2015- <u>0012</u>
In the Matter of:)	
)	
Waypoint Homes, Inc.)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
Respondent)	40 C.F.R. §§ 22.13 and 22.18
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA Region IX”) and Waypoint Homes, Inc., (“Respondent”) agree to settle this case initiated under the Toxic Substances Control Act (“TSCA” or the “Act”), 15 U.S.C. §§ 2601 et seq., and consent to the entry of this Consent Agreement and Final Order (“CAFO”).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action instituted against Respondent pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for violation of Section 1018 of Title X of

the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“Section 1018”), 42 U.S.C. § 4852d, and federal regulations promulgated to implement Section 1018 at 40 C.F.R. Part 745, Subpart F. Violation of Section 1018 through its implementing regulations at 40 C.F.R. Part 745, Subpart F constitutes violation of Section 409 of TSCA, 15 U.S.C. § 2689.

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

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose certain disclosure requirements concerning lead-based pain and/or lead-based paint hazards upon the sale or lease of target housing.
5. “Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such building) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.
6. “Agent” means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. 40 C.F.R. § 745.103.
7. “Lessor” means any entity that offers target housing for lease, rent or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.

8. "Lessee" means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.
9. Each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1).
10. Each contract to lease target housing shall include a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. 40 C.F.R. § 745.113(b)(2).
11. Each contract to lease target housing shall include a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or indicate that no such records or reports are available. 40 C.F.R. § 745.113(b)(3).
12. Each contract to lease target housing shall include a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2686. 40 C.F.R. § 745.113(b)(4).
13. Each contract to lease target housing shall include, as an attachment to the lease or within the lease, a statement by the agent involved in the transaction to lease target housing that the agent has informed the lessor of the lessor's obligations and that the agent is aware of his/her duty to ensure compliance with Section 1018 (42 U.S.C. § 4852d). 40 C.F.R. § 745.113(b)(5).

14. Each contract to lease target housing shall include the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature. 40 C.F.R. § 745.113(b)(6).
15. As provided at 40 C.F.R. § 745.118(e), failure to comply with 40 C.F.R. § 745.113 is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each such violation shall not be more than \$16,000 for violations occurring after January 12, 2009, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410.

C. ALLEGATIONS

16. EPA has jurisdiction over this matter pursuant to Section 1018.
17. At all times relevant to this matter, Respondent was an “agent,” as that term is defined at 40 C.F.R. § 745.103.
18. At all times relevant to this matter, Respondent was a “lessor” of residential properties located at 5255 Ensley Court, 3638 Harding Street, and 3715 Mimosa Street in Riverside, California, and 1153 E. 38th Street and 1234 Pumalo Street in San Bernardino, California, as that term is defined at 40 C.F.R. § 745.103.
19. At all times relevant to this matter, the residential properties located at 5255 Ensley Court, 3638 Harding Street, and 3715 Mimosa Street in Riverside, California, and 1153 E. 38th Street and 1234 Pumalo Street in San Bernardino, California were “target housing,” as that term is defined at 40 C.F.R. § 745.103.
20. Respondent entered into five leases of the residential properties referenced in paragraphs 18 and 19 for occupancies greater than 100 days or 100 days or less where lease renewals or extensions could occur on or around the dates listed below:

<u>Address</u>	<u>Date of Lease</u>
5255 Ensley Court, Riverside	July 5, 2012
3638 Harding Street, Riverside	July 5, 2012
3715 Mimosa Street, Riverside	May 1, 2012
1153 E. 38 th Street, San Bernardino	June 1, 2012
1234 Pumalo Street, San Bernardino	July 20, 2012

21. At the times that Respondent entered into the five leases referenced in Paragraph 20, Respondent failed to include, as an attachment to the leases or within the leases, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1), as required by 40 C.F.R. § 745.113(b)(1).
22. At the times that Respondent entered into the five leases referenced in Paragraph 20, Respondent failed to include in the leases a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the houses being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.113(b)(2).
23. At the times that Respondent entered into the five leases referenced in Paragraph 20, Respondent failed to include in the leases a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the houses that had been provided to the lessees or indicate that no such records or reports are available, as required by 40 C.F.R. § 745.113(b)(3).
24. At the times that Respondent entered into the five leases referenced in Paragraph 20, Respondent failed to include in the leases a statement by the lessees affirming receipt of the information set forth in 40 C.F.R. § 745.113(b)(2) and (3) and the lead hazard

information pamphlet required under 15 U.S.C. § 2686, as required by 40 C.F.R. § 745.113(b)(4).

25. At the times that Respondent entered into the five leases referenced in Paragraph 20, Respondent failed to include, as an attachment to the lease or within the lease, a statement by the agent involved in the transaction to lease target housing that the agent has informed the lessor of the lessor's obligations and that the agent is aware of his/her duty to ensure compliance with Rule 1018, as required by 40 C.F.R. § 745.113(b)(5).
26. At the times that Respondent entered into the five leases referenced in Paragraph 20, Respondent failed to include the signatures of Respondent and the lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signatures, as required by 40 C.F.R. § 745.113(b)(6).
27. Each of Respondent's failures to comply with 40 C.F.R. § 745.113, as set forth in Paragraphs 21 through 26, constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689, which can be assessed a penalty of up to \$16,000 per violation for violations occurring after January 12, 2009.

D. RESPONDENT'S ADMISSIONS

28. In accordance with 40 C.F.R. § 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 Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

29. Respondent hereby consents to the assessment of a civil penalty in the amount of TWENTY-FIVE THOUSAND, THREE HUNDRED AND FORTY DOLLARS (\$25,340), as full, final, and complete settlement of the civil claims alleged in Section I.C of the CAFO. The civil penalty shall be paid within thirty (30) days of the effective date of this CAFO and according to the terms of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or paid by one of the other methods listed below and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
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

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter “sfol.1” in the search field

Open form and complete required fields

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

The payment shall be accompanied by a transmittal letter identifying Respondent, the case name, and the case docket number. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to:

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

Max Weintraub
Enforcement Division (ENF-2-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

30. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
31. If Respondent fails to pay the civil administrative penalty specified in Paragraph 29 of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:
 - a. The debt being referred 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, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
 - b. The debt being collected 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. Part 13, Subparts C and H.
 - c. EPA may (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. 40 C.F.R. § 13.17.

- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in paragraph 29. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RETENTION OF RIGHTS

32. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the CAFO. 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 Section I.C of this CAFO; 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 Section I.C of this CAFO.

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

G. ATTORNEYS' FEES AND COSTS

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

H. EFFECTIVE DATE

35. In accordance with 40 C.F.R. §§ 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.

J. BINDING EFFECT

36. 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.
37. 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 WAYPOINT HOMES, INC.:

6/3/15
DATE



By: Marco Vartanian
Title: VP Property Management
Address: 1999 Harrison St., 24th Floor
Oakland, CA 94612

FOR COMPLAINANT EPA REGION IX:

6/15/15
DATE



Douglas K. McDaniel
Chief, Waste and Chemical Section
Enforcement Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

II. FINAL ORDER

EPA Region IX and Waypoint Homes, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2015-0013) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$25,340 and otherwise comply with the terms set forth in the CAFO.

07/08/15

DATE



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

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order in the matter of Waypoint Homes, Inc. with Docket # TSCA-09-2015-0018 has been filed with the Regional Hearing Clerk, Region IX and copies were sent:

By Certified Mail, Return Receipt Requested to Respondent:

Mr. Marco Vartanian
VP Property Management
Waypoint Homes, Inc.
1999 Harrison Street, 24th Floor
Oakland, CA 94612

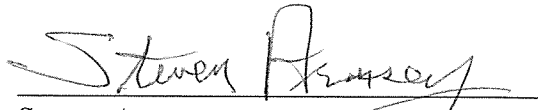
Certified Mail Receipt #:

Hand Delivered to:

David Kim
Office of Regional Counsel
U.S. EPA, Region 9, ORC-2
75 Hawthorne Street
San Francisco, CA 94105

Date

July 9, 2015


Steven Armsey
Interim Regional Hearing Clerk