



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

By Certified Mail, Return Receipt Requested: 7012 1640 0001 2191 1820

Mr. Ronald Kawahara
President
Destination Maui, Inc.
220 Imi Kala Street, Suite #104
Wailuku, HI 96793

JUN 03 2014

Re: In the Matter of Destination Maui, Inc.
Consent Agreement and Final Order

Docket No. TSCA-09-2013-0010

Dear Mr. Kawahara:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with EPA Region 9. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Max Weintraub at 415-947-4163.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. McDaniel".

Douglas K. McDaniel
Manager
Waste and Chemical Section
Enforcement Division

Enclosures

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REGION IX

US EPA REGION IX
HEALTH CLERK

75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

US EPA REGION IX
HEALTH CLERK

In the Matter of:

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) Docket No. TSCA-09-2013-0010
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Destination Maui, Inc.,

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) CONSENT AGREEMENT
) AND FINAL ORDER
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) Respondent.
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I. CONSENT AGREEMENT

Complainant, the Director of the Enforcement Division, the United States Environmental Protection Agency, Region IX ("EPA" or "Complainant"), and Respondent, Destination Maui, Inc. ("Respondent"), agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY

1. EPA initiated this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a) by issuing on September 4, 2013 a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22.

2. The Complaint, which was amended on February 28, 2014, alleges that Respondent violated Section 409 of TSCA by failing to comply with Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and its implementing regulations at 40 C.F.R. Part 745, Subpart F.

3. EPA and Respondent have agreed to resolve this civil administrative proceeding by executing this CAFO pursuant to 40 C.F.R. § 22.18(b).

B. RESPONDENT'S ADMISSIONS

4. In accordance with 40 C.F.R. § 22.18(b)(2), for the purposes 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 F of this CAFO; (iv) waives any right to contest the allegations in the Complaint; and (v) waives the right to appeal the proposed final order contained in this CAFO.

C. SUPPLEMENTAL ENVIRONMENTAL PROJECT

5. In accordance with the three (3) year schedule set forth in Paragraph 6, below, Respondent shall perform a supplemental environmental project (SEP) that includes purchasing and donating blood lead screening equipment to an appropriate nonprofit organization in Maui and having 350 uninsured children less than six years old that live in Maui screened for blood lead levels. EPA and Respondent intend that the SEP will secure environmental and/or public health protection and improvements.

6. In implementing the SEP, Respondent shall meet the following deadlines:

- a. Within twelve (12) months after the effective date of this CAFO, Respondent shall purchase three LeadCare II Analyzer Kits, and donate them to the Community Clinic Of Maui, Inc. d/b/a Mālama I Ke Ola Health Center ("CCM"), a Section 501(c)(3) corporation.
- b. Within twenty-four (24) months after the effective date of this CAFO, Respondent shall ensure that at least 175 uninsured children less than six years of age that live on Maui are screened for blood lead levels, and that, at a minimum, any child with equal to or greater than 5 micrograms of lead per deciliter of blood identified through the screening process is referred to a Maui-based health authority for follow-up.
- c. Within Thirty-six (36) months after the effective date of this CAFO, Respondent shall ensure that at least an additional 175 uninsured children (for a total of 350) less than six years of age that live on Maui are screened for blood lead levels, and that, at a minimum, any child with equal to or greater than 5 micrograms of lead per deciliter of blood identified through the screening processing is referred to a Maui-based health authority for follow-up.

7. Twelve (12) months and twenty-four (24) months after the effective date of this CAFO, the Respondent shall provide progress reports to the EPA. The progress reports will identify i) amount and nature of funds spent to date to implement the SEP, ii) the cost and type of any equipment purchased and donated to CCM pursuant to the SEP, iii) the number of uninsured children under the age of six years old tested to the date of the submittal, iv) without specifying any personal identification information, the age of the children tested (i.e., <1, 1, 2, 3, 4, or 5 years old), v) the zip code of the home where each child that is tested lives or identification of the child as homeless, and vi) a description of the follow-up, including referrals to a Maui-based health authority, conducted for each child with a test result equal to or greater than 5 micrograms

of lead per deciliter or blood.

8. If Respondent fails to meet, or has reason to believe that it will fail to meet, any requirement of Section C of this CAFO, Respondent shall notify EPA of such failure and its likely duration in writing within ten (10) business days of the day Respondent first becomes aware of the failure, with an explanation of the failure's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such failure. If the cause of a failure cannot be fully explained at the time the report is due, Respondent shall so state in the status report. Respondent shall investigate the cause of the failure and shall then submit a report that includes a full explanation of the cause of the failure, within thirty (30) calendar days of the day Respondent becomes aware of the cause of the failure.

9. Not later than thirty (30) calendar days after thirty six (36) months have passed since the effective date of the CAFO, Respondent shall submit to EPA a SEP Completion Report that includes all of the information specified for the progress report, as described in Paragraph 7, plus an itemized list of all SEP costs and supporting documentation verifying Respondent's expenditures for the SEP (including copies of receipts, invoices, purchase orders and/or contracts).

10. Within thirty (30) calendar days after receiving a SEP Completion Report, EPA shall notify Respondent regarding its determination of whether Respondent has satisfactorily completed the SEP.

11. Any report submitted to EPA under Section C of this CAFO shall be signed by a responsible official of the Respondent, as defined below, and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that to the best of my knowledge the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a material false statement.

12. A responsible official is defined, in pertinent part, as:

for a corporation, a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities

employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

13. In executing the SEP, Respondent certifies that, as of the date of executing this CAFO:

- a. Respondent is not required to perform or develop the SEP by any federal, state, international or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- b. Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP;
- c. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP;
- d. Respondent has inquired of the Community Clinic of Maui whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Community Clinic of Maui that it is not a party to such a transaction; and
- e. the SEP is not a project that Respondent was planning or intending to perform or implement other than in settlement of the claims resolved in this CAFO.

14. Any submission required under Section C of this CAFO shall be sent to:

Max Weintraub (ENF-2-2)
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Phone: (415) 947-4163
Email: weintraub.max@epa.gov

With a copy to:

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

Phone: (415) 972-3914
Email: lieben.ivan@epa.gov

15. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CAFO shall include the following language: "This project is conducted as part of a settlement by the U.S. Environmental Protection Agency of a residential lead-based paint disclosure enforcement action under the Toxic Substances Control Act."

D. PAYMENT OF CIVIL PENALTY

16. Respondent agrees to the assessment of a civil penalty in the amount of FIVE THOUSAND FIVE HUNDRED (\$5,500) as final settlement of the civil claims against Respondent arising under TSCA, as alleged in the Complaint. Respondent shall pay the civil penalty within thirty (30) days of the effective date of this CAFO and according to the terms of the CAFO. The assessed penalty shall be paid by **certified or cashier's check**, payable to "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
PO 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 "sfo1.1" 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.

Concurrently, 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, shall be sent with a transmittal letter indicating Respondent's name, the case title, and the docket number to:

- a) Regional Hearing Clerk (ORC-1)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
- b) Manager (ENF-2-2)
Waste and Chemical Section
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

17. In accordance with the Debt Collection Improvement Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the penalty payment must be received within thirty (30) calendar days of the effective date of this CAFO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CAFO at the current rate published by the United States Treasury as described in 40 C.F.R. § 13.11(a). A late penalty charge will be imposed after thirty (30) calendar days with an additional charge for each subsequent 30-day period, in accordance with 40 C.F.R. § 13.11(b). A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date, as described at 40 C.F.R. § 13.11(c). Respondent further will be liable for stipulated penalties, as described in Section E of this CAFO, for any payment not received by its due date.

18. 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.

19. The penalties specified in this CAFO shall represent civil penalties assessed by EPA and shall not be deducted by the Respondent or any other person or entity for federal, state or local taxation purposes.

E. STIPULATED PENALTIES

20. In addition to the interest and per annum penalties described in Paragraphs 17 and 18, above, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Paragraph 16, Respondent shall pay EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues.

21. In the event that Respondent fails to satisfactorily complete the SEP within three (3) years of the effective date of this CAFO, or otherwise fails to comply with any requirement of

the SEP, Respondent shall to pay EPA a stipulated penalty in the following amounts for each day the default continues, up to but not to exceed FORTY-NINE THOUSAND, FIVE HUNDRED DOLLARS (\$49,500):

VIOLATION	STIPULATED PENALTY
a. Failure to timely or adequately complete the work tasks, including the purchase and donation of equipment and blood lead screening of children, by the specified deadlines set forth in Paragraph 6	\$1,000 per calendar day after the day for completion of the work task
b. Failure to timely submit a complete and adequate report, such as the SEP Completion Report or progress reports required by Paragraph 7	\$500 per day during the first thirty (30) calendar days that it is late, then \$1,000 per day thereafter

22. All penalties shall begin to accrue on the date that performance is due or a violation of this CAFO occurs, and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

23. All penalties owed to EPA under this Section shall be due within thirty (30) days of Respondent's receipt of a notification of noncompliance and request for payment from EPA. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

24. Payment of stipulated penalties shall be made in accordance with the methods set forth for payment of the penalty in Section D of this CAFO.

25. All payments shall indicate the name of the Facility, Respondent's name and address, and the EPA docket number assigned to this action.

26. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required by this CAFO.

27. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CAFO.

28. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

29. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

F. CERTIFICATION OF COMPLIANCE

30. By signing this CAFO, Respondent certifies that it is now in full compliance with all of the Lead Disclosure requirements set forth in 40 C.F.R. Part 745 Subpart F.

G. RETENTION OF RIGHTS

31. 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 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 Amended 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.

32. 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.

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

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

J. BINDING EFFECT

35. 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.

36. 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 DESTINATION MAUI, INC.

5/20/14

Date

Ronald Kawahara

Ronald Kawahara
President
Destination Maui, Inc.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX

6/3/14

Date

Kathleen Johnson

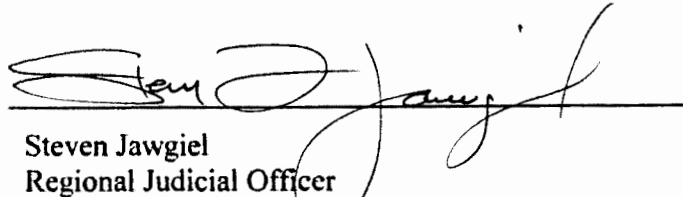
Kathleen Johnson
Director, Enforcement Division
United States Environmental Protection Agency,
Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (Docket No. TSCA-09-2013-0010) be entered and that Respondent pay a civil administrative penalty of FIVE THOUSAND, FIVE HUNDRED (\$5,500) within thirty (30) days after the Effective Date of this CAFO, perform the project set forth in Section C of the Consent Agreement, and otherwise comply with the terms set forth in the Consent Agreement.

This Consent Agreement and Final Order shall be effective upon filing by the Regional Hearing Clerk.

6/03/14
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 Destination Maui, Inc. with Docket # TSCA-09-2013-0010 has been filed with the Regional Hearing Clerk, Region IX and copies were sent:

By Certified Mail, Return Receipt Requested to Respondent:

Mr. Ronald Kawahara
President
Destination Maui, Inc.
220 Imi Kala Street, Suite #104
Wailuku, HI 96793

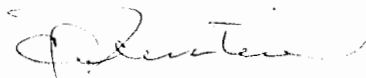
Certified Mail Receipt #: 7012 1640 0001 2191 1820

Hand Delivered to:

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

6/3/14

Date



FILED: Steven Armsey
Acting Regional Hearing Clerk