



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

AUG 14 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Juan Martinez  
Clear Lake Palms  
401 Executive Center Drive  
West Palm Beach, FL 33401

SUBJ: Consent Agreement and Final Order (CAFO)  
Docket No. TSCA-04-2007-2754(b)

Dear Mr. Martinez:

Enclosed please find an executed copy of the ratified Consent Agreement and Final Order (CAFO) in the above referenced matter. The CAFO is effective as of the date of filing with the Regional Hearing Clerk. Please make note of the provisions in the CAFO, paragraphs 13, 14 and 15, with respect to payments of the assessed penalty. The first payment is due within thirty (30) days of the effective date of CAFO, with the subsequent payments being due in monthly intervals thereafter.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of the potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the Notice.

If you have any questions, please contact Mr. Alex Winston of the EPA Region 4 staff at (404) 562-8994.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Benante".

Joanne Benante  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
 )  
Clear Lake Palms )  
 Respondent )  
\_\_\_\_\_ )

Docket Number: TSCA-04-2007-274(b)

RECEIVED  
EPA REGION IV  
2007 AUG 13 PM 3:35  
HEARING CLERK

**CONSENT AGREEMENT FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Clear Lake Palms (hereinafter, "Respondent").

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

3. The Administrator of EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F under the authority of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Pursuant to 42 U.S.C. § 4852d(b)(5), a violation of any rule in 40 C.F.R. Part 745, is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689. Any person who violates Section 409 of TSCA may be assessed a penalty of up to \$10,000 for each such violation, in accordance with Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and Section 1018. For a violation occurring after January 31, 1997, a penalty of up to \$11,000 may be assessed pursuant to 40 C.F.R. Part 19, and in accordance with 40 C.F.R. § 745.118(f).

4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

### **III. Specific Allegations**

5. Respondent is a lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 401 Executive Center Drive, West Palm Beach, Florida. This residential housing is "target housing," as defined at 40 C.F.R. § 745.103.

6. Based on information obtained by EPA on or about November 13, 2006, relating to Respondent's contracts to lease its target housing described above, EPA alleges that Respondent violated Section 409 of TSCA and the requirements noted in the EPA Notice of Violation. The penalty associated with this action is based on the following regulations:

- Pursuant to 40 C.F.R. § 745.107(a)(1), a lessor shall provide the lessee an EPA-approved lead hazard information pamphlet before the lessee is obligated under any contract to lease target housing.

Respondent failed to provide lessees an EPA-approved pamphlet.

- Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing shall include, as an attachment to or within the contract, a "Lead Warning Statement".

Respondent failed to include the required "Lead Warning Statement".

- Pursuant to 40 C.F.R. § 745.113(b)(2), each contract to lease target housing shall include, as an attachment to or within the contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

Respondent failed to include an appropriate statement.

- Pursuant to 40 C.F.R. § 745.113(b)(3), each contract to lease target housing shall include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee, or an indication that no such records or reports are available.

Respondent failed to include the appropriate information.

### **IV. Consent Agreement**

7. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

8. Respondent waives its right to a hearing on the allegations contained herein.

9. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

10. Respondent certifies that as of the date of its execution of this CAFO, it is otherwise in compliance with the requirements of 40 C.F.R. Part 745, Subpart F.

11. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or pursue criminal enforcement.

12. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of 40 C.F.R. Part 745, Subpart F.

### **V. Final Order**

13. Respondent is assessed a civil penalty of ***Three Thousand Five Hundred Ninety-Eight Dollars (\$3,598)***. This penalty amount, including the interest associated with a monthly payment schedule over a three-month period, totals ***Three Thousand Six Hundred Twenty-Five Dollars and Sixty Cents (\$3,625.60)***. The first payment is due within thirty (30) days of the effective date of this CAFO, and subsequent payments are due in thirty day (30) intervals thereafter as follows:

<b>Payment #</b>	<b>Schedule</b>	<b>Amount</b>
1	Due within 30 days of filing CAFO	\$1,208.53
2	Due within 60 days of filing CAFO	\$1,208.53
3	Due within 90 days of filing CAFO	\$1,208.54

14. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to the following address:

For payment submittal by U.S. Postal Service:

U.S. Environmental Protection Agency  
Box 371099M  
Pittsburgh, PA 15251

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.):

Mellon Client Service Center  
ATTN: Shift Supervisor, Room 0690  
Lockbox 371099M  
500 Ross Street  
Pittsburgh, PA 15262-0001

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

15. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Alex Winston  
Children's Health, Lead &  
Asbestos Management Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303.

16. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

17. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of up to six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

18. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

19. This CAFO shall be binding upon the Respondent, its successors and assigns.

20. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Alex Winston  
Children's Health, Lead &  
Asbestos Management Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-8994

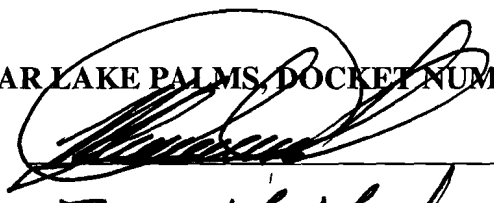
21. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

**VI. Effective Date**

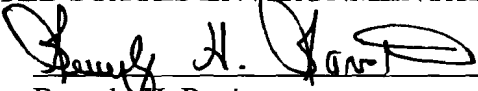
22. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**CLEAR LAKE PALMS, DOCKET NUMBER: TSCA - 04-2007-2754(b)**

By:  \_\_\_\_\_ Date: 07/06/2007  
Name: Juan M. Martinez (Typed or Printed)  
Title: Operations Director (Typed or Printed)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

By:  \_\_\_\_\_ Date: 8/1/07  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division  
Region 4

**APPROVED AND SO ORDERED** this 13<sup>th</sup> day of August, 2007

By: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Clear Lake Palms, Docket Number: TSCA-04-2007-2754(b), to the addressees listed below.

Alex Winston  
Children's Health, Lead &  
Asbestos Management Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

(via EPA's internal mail)

Nancy Tommelleo  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303

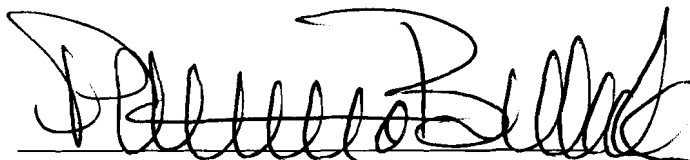
(via EPA's internal mail)

Juan Martinez  
Clear Lake Palms  
401 Executive Center Drive  
West Palm Beach, FL 33401

(via Certified Mail, Return Receipt Requested)

Date:

8-14-07



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth St., SW  
Atlanta, GA 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Sandra Wilson on 8/9/07  
(Name) (Date)

in the OEA at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Juan Martinez / Clear Lake Palms  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 3598  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: TSCA 04 2007 - 2754(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |   |
|--|---|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |  |   |
|--|---|
| 1. Originating Office<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|