

**FILED**

2008 SEP 30 AM 10:53

REGIONAL HEARING CLERK

NANCY J. MARVEL  
Regional Counsel

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

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

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
 )  
JOSEPH LUERAS )  
 )  
 )  
Respondent )  
 )  
 )  
\_\_\_\_\_ )

**Docket No. TSCA-09-2008- 00 1 2**  
**CONSENT AGREEMENT AND**  
**FINAL ORDER PURSUANT**  
**TO 40 C.F.R. §§ 22.13 AND 2218**

**I. INTRODUCTION**

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the

Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R Part 22. The Complainant is the Director of the Communities and Ecosystem Division, United States Environmental Protection Agency (“EPA”), Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA, Region IX, the authority to bring this action under TSCA. In turn, the Regional Administrator of EPA, Region IX, further delegated the authority to bring this action under TSCA to the Director of Communities and Ecosystem Division. Respondent is Mr. Joseph Lueras (“Mr. Lueras” or “Respondent”) who resides in San Francisco, California. Complainant alleges that Respondent violated Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. §§ 4851 et seq., Section 409 of TSCA, 15 U.S.C. § 2689, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”), to implement those statutory provisions. Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of the Consolidated Rules, the filing of this consent agreement and final order (“CAFO” or “Agreement”) simultaneously commences and concludes this civil administrative action against the Respondent.

A. APPLICABLE STATUTORY AND REGULATORY SECTIONS

1. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose certain disclosure requirements concerning lead-based paint and/or lead-based paint hazards upon the sale or lease of target housing.
2. “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 6 years of age

resides or is expected to reside in such housing) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.

3. “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.

4. “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.

5. 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). 40 C.F.R. § 745.113(b)(1).

6. Each contract to lease target housing shall include, as an attachment or within the contract, 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).

7. Each contract to lease target housing shall include, as an attachment 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 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).

8. Each contract to lease target housing shall include, as an attachment or within the

contract, 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. § 2696. 40 C.F.R. § 745.113(b)(4).

9. Each contract to lease target housing shall include, as an attachment or within the contract, 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).

10. Failure to comply with 40 C.F.R. §§ 745.107 or 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 \$11,000 for violations occurring after July 28, 1997. 40 C.F.R. §§ 745.118(e) and (f).

**B. ALLEGATIONS**

11. Between at least August 2002 and March 2006, Mr. Lueras owned and leased various residential rental units located in Sacramento, California, identified by the addresses listed in Paragraph 16 (hereinafter “Rental Units”).

12. The Rental Units were all constructed prior to 1978.

13. The Rental Units are “target housing” as defined in 40 C.F.R. § 745.103.

14. On the following dates, Respondent entered into the following eight written lease agreements (contracts) with individuals for the lease of the Rental Units:

Number	Address of Rental Unit	Lease Date
1	4208 55 <sup>th</sup> Street, Sacramento, CA	08/19/2002
2	1823 T Street, #1, Sacramento, CA	09/08/2002

3	1823 T Street, #4, Sacramento, CA	09/24/2002
4	1823 T Street, #5, Sacramento, CA	05/07/2003
5	3341 10 <sup>th</sup> Avenue, #5, Sacramento, CA	08/14/2004
6	1823 T Street, #3, Sacramento, CA	10/1/2004
7	1823 T Street, #6, Sacramento, CA	08/08/2005
8	1823 T Street, #2, Sacramento, CA	03/02/2006

15. Each of the eight contracts referenced in Paragraph 16, above, covered a term of occupancy greater than 100-days.

16. Between August 2002 and March 2006, Respondent offered the Rental Units for lease, and entered into contracts to lease with individuals on the dates listed in Paragraph 16, above.

17. Respondent is a “lessor”, as defined by 40 C.F.R. § 745.103, since he offered the Rental Units for lease.

18. Each individual who signed a lease to pay rent in exchange for occupancy of one of the Rental Units became a “lessee” as defined in 40 C.F.R. § 745.103.

19. Complainant alleges that Respondent violated Section 1018 and the Lead Disclosure Rule in the following ways:

Count 1

20. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

21. For the August 22, 2002, lease for the rental of 4208 55<sup>th</sup> Street, Sacramento, California, Respondent failed to include, as an attachment to the lease or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

22. Respondent's failure to include, as an attachment to the lease or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1) constitutes one (1) count of violation of 40 C.F.R. § 745.107(a)(2).

Counts 2-9

23. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

24. For the eight (8) leases identified in Paragraph 16, Respondent failed to include, as an attachment to the leases or within the leases, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the units being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

25. Respondent's failure to include, as an attachment to the leases or within the leases, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the units being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(2).

Counts 10-17

26. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

27. For the eight (8) leases identified in Paragraph 18, Respondent failed to include, as an attachment to the leases or within 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 units that had been provided to the lessees or indicate that no such records or reports are available.

28. Respondent's failure to include, as an attachment to the leases or within 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 units that had been provided to the lessees or indicate that no such records or reports are available constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(3).

Counts 18-25

29. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

30. For the eight (8) leases identified in Paragraph 16, Respondent failed to include, as an attachment to the leases or within 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. § 2696.

31. Respondent's failure to include, as an attachment to the leases or within 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. § 2696 constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(4).

Counts 26-33

32. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

33. For the eight (8) leases identified in Paragraph 16, Respondent failed to include, as an attachment to the leases or within the leases, 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 signature.

34. Respondent's failure to include, as an attachment to the leases or within the leases, 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 signature constitutes eight (8) counts of violation of 40 C.F.R. § 745.113(b)(6).

#### C. RESPONDENT'S ADMISSIONS

35. 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 factual allegations contained in this CAFO; (iii) consents to the terms of penalty under Section D and all other terms of this CAFO; (iv) waives any rights to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

#### D. CIVIL ADMINISTRATIVE PENALTY

36. Section 16(a) of TSCA and Section 1018 authorize the Administrator of 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.

After consideration of (1) the size of Respondent's business, (2) Respondent's ability to continue in business, and (3) the gravity of Respondent's violations, and (4) other factors, EPA proposed the assessment of TWENTY-FIVE THOUSAND FOUR HUNDRED TEN DOLLARS



(\$25,410) in civil penalties for the alleged violations described in Section I.B of the CAFO.

37. Respondent consents to the assessment of a penalty in the amount of TWENTY-FIVE THOUSAND FOUR HUNDRED TEN DOLLARS (\$25,410), plus interest, paid in an initial payment of FIVE THOUSAND DOLLARS followed by four semiannual installments as final settlement and complete satisfaction of the civil claims against Respondent alleged in Section I.B of this CAFO.

38. Respondent shall pay each installment of the assessment penalty in accordance with the schedule set forth in Attachment 1 of this CAFO. However, if Respondent chooses to pay off the assessed penalty earlier than the period provided for in the CAFO and Attachment 1, but later than thirty (30) days after the effective date of the CAFO, Respondent shall pay interest at the rate of 3% per annum only on the outstanding, unpaid balance of the assessed penalty at the time when payment is made.

39. Payment of all installments 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 installment payments shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the installment payments 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

AND

Mariela Lopez  
Communities and Ecosystem Division (CED-4)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

40. 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.

41. In the event that Respondent fails to pay any installment of the civil administrative penalty assessed above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of FOUR HUNDRED DOLLARS (\$400) for each day that payment is late. Upon Complainant's written demand, payment of the stipulated penalty shall immediately become due and payable. In addition, failure to pay the civil administrative penalty by any of the installment due dates 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; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. § 13.17.

42. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by any of the installment due dates. 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.

#### E. RETENTION OF RIGHTS

43. In accordance with 40 C.F.R. § 22.18(c) and as provided below, this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Sections I.B of this 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 Sections I.B of this CAFO; or (ii) any criminal liability. In addition to any other authority, right, or remedy available to EPA, 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 Sections I.B of this CAFO.

44. 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.

#### F. ATTORNEYS' FEES AND COSTS

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

this proceeding.

G. EFFECTIVE DATE

46. 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.

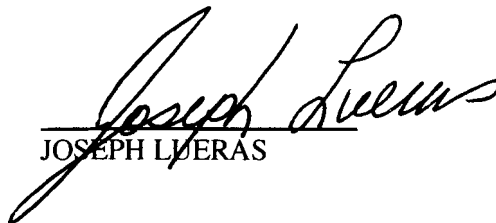
H. BINDING EFFECT

47. 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.

48. 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:

9-17-08  
DATE

  
JOSEPH LUERAS

FOR COMPLAINANT EPA:

9/29/08  
DATE



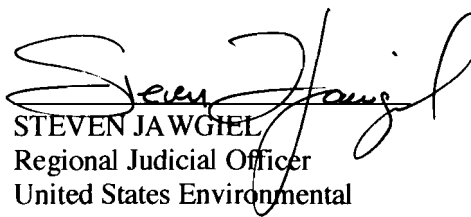
ENRIQUE MANZANILLA  
Director, Communities and  
Ecosystems Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

**II. FINAL ORDER**

EPA and the Respondent Mr. Joseph Lueras, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2008-12<sup>be</sup>) entered, and Respondent shall pay a civil administrative penalty in the amount of \$25,410, plus interest, in accordance with the terms and payment schedule set forth in the Consent Agreement.

09/30/08  
DATE

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

ATTACHMENT 1

Payment Schedule  
Respondent shall pay:

- (A) FIVE THOUSAND DOLLARS (\$5,000) no later than 30 days of the effective date of this CAFO.
- (B) FIVE THOUSAND TWO HUNDRED NINETY-SIX DOLLARS (\$5,296) no later than March 31, 2009;
- (C) FIVE THOUSAND TWO HUNDRED NINETY-SIX DOLLARS (\$5,296) no later than September 30, 2009;
- (D) FIVE THOUSAND TWO HUNDRED NINETY-SIX DOLLARS (\$5,296) no later than March 31, 2010; and
- (E) FIVE THOUSAND TWO HUNDRED NINETY-SIX DOLLARS (\$5,296) no later than September 30, 2010.



CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Part 40 C.F.R. Section 22.13 and 22.18, (Docket No. TSCA-9-2008-0000) against Joseph Lueras, 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 same was sent to Respondent at the following address:

Mr. Joseph Lueras  
1724-A Filbert Street  
San Francisco, CA 94123

Certified Mail No. 7007 3020 0000 9806 7937



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

Date: SEP 30 2008