

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY RECEIVED
REGION 1

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EPA ORC
OFFICE OF
REGISTRATION & COMPLIANCE CLERK

_____)
In the Matter of:)
)
National Enterprises, Inc.)
)
and)
)
MA No. 2, LLC,)
)
Respondents.)
_____)

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No.
TSCA-01-2009-0059

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency - Region 1 ("EPA"),
having issued a civil administrative Complaint on May 19, 2009, against named Respondents,
National Enterprises, Inc. and MA No. 2, LLC, in accordance with the Consolidated Rules of
Practice at 40 C.F.R. Part 22; and,

Complainant and Respondents (the "Parties") having agreed that settlement of this matter
is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO")
without further litigation is the most appropriate means of settling this matter;

NOW THEREFORE, before the taking of any testimony, without any adjudication of
issues of law or fact herein, the Parties agree to comply with the terms of this CAFO.

I. PRELIMINARY STATEMENT

1. EPA initiated this 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), and 40 C.F.R.
§ 745.118, by filing the above-mentioned Complaint against both National Enterprises, Inc.

Handwritten signature and date:
10/29/09

("National") and MA No. 2, LLC ("MA No. 2"). Based on documents and factual information provided to EPA by National after the Complaint was filed, EPA hereby withdraws, with prejudice, the civil administrative penalty claims against National arising out of the lease transactions specified in the Complaint, to which withdrawal National consents. Accordingly, except for the terms set forth in Paragraphs 4, 6, 16, and 17 herein, National shall have no obligations under this CAFO.

2. EPA alleged in its Complaint that Respondents violated TSCA Section 409, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*, and federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, and set forth at 40 C.F.R. Part 745, Subpart F ("Disclosure Rule"). The Complaint alleges that when leasing various apartments in a building constructed before 1978 ("target housing"), Respondents failed to:

(a) provide tenants with an EPA-approved lead hazard information pamphlet before they were obligated to rent or lease apartments, in violation of 40 C.F.R. § 745.107(a)(1) and TSCA Section 409;

(b) disclose to tenants the presence of any known lead-based paint or lead-based paint hazards in target housing, in violation of 40 C.F.R. § 745.107(a)(2) and TSCA Section 409, and/or provide tenants with available records or reports pertaining to lead-based paint or lead-based paint hazards, in violation of 40 C.F.R. § 745.107(a)(4) and TSCA Section 409;

(c) include in leases or rental agreements or as an attachment thereto, the Lead Warning Statement, in violation of 40 C.F.R. § 745.113(b)(1) and TSCA Section 409; and

(d) include in leases or rental agreements or as an attachment thereto, a statement disclosing the presence of known lead-based paint or lead-based paint hazards, or lack of knowledge thereof, in violation of 40 C.F.R. § 745.113(b)(2) and TSCA Section 409.

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3. Respondents filed an Answer to the Complaint, on or about June 19, 2009.

4. This CAFO shall apply to and be binding upon Respondents MA No. 2 and National and their successors, employees, officers, affiliates and assigns, including, but not limited to, subsequent purchasers. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint. As to Respondent National, this CAFO shall impart no obligations whatsoever beyond those referenced in the preceding Paragraph 1, to which National consents.

5. Respondent MA No. 2 stipulates that, in the Complaint, EPA states a claim upon which relief can be granted. Respondent MA No. 2 waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this CAFO.

6. Each Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and its right to appeal the Final Order accompanying the Consent Agreement.

II. TERMS OF SETTLEMENT

7. Respondent MA No. 2 hereby certifies that it is in compliance with the Disclosure Rule.

8. Pursuant to Section 16(a) of TSCA, in light of the nature of the violations, Respondent MA No. 2's financial ability to pay a penalty, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of ten thousand dollars (\$10,000).


10/29/09

9. Without admitting or denying the factual and legal allegations contained in the Complaint, Respondent MA No. 2 consents to the issuance of this CAFO and consents to the payment of the civil penalty cited in the foregoing paragraph.

10. Within 30 days of the effective date of this CAFO, Respondent MA No. 2 shall make payment by submitting a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of \$10,000, to:

U.S. EPA, Region 1
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent MA No. 2 shall provide a copy of the check to:

Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

and to

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023.

The check shall bear the name and docket number of this action (i.e., "*In the Matter of: National Enterprises, Inc. and MA No. 2, LLC, EPA Docket No. TSCA-01-2009-0059*"). Interest and late charges, if applicable, shall be paid as specified in Paragraph 12 herein.

11. The penalty specified in Paragraphs 8 and 10, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal and state taxes.



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Accordingly, Respondent MA No. 2 agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use such payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

12. 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 a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Pursuant to 31 C.F.R. § 901.9(d), any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

13. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondents' violation of any applicable provision of law.

14. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law. Nor shall this CAFO be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

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15. This CAFO constitutes a settlement by EPA of the claims for civil penalties set forth in the Complaint pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) (for violations of TSCA Section 409, 15 U.S.C. § 2689), the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*, and the Disclosure Rule at 40 C.F.R. Part 745, Subpart F. Nothing in this CAFO is intended, nor shall be construed, to operate in any way to resolve any criminal liability of the Respondents. Nothing in this CAFO shall be construed as limiting the authority of the United States to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment.

16. Each undersigned representative of the Parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

17. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

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In re: National Enterprises, Inc. and MA No. 2, LLC, TSCA-01-2009-0059
Consent Agreement and Final Order

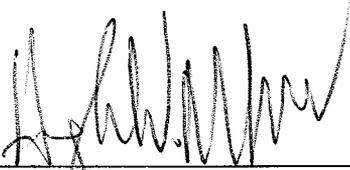
For EPA:



Joanna B. Serison

Joel G. Blumstein, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA - Region 1

Date: 11/13/09



Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA - Region 1

Date: 11-9-09



10/29/09

In re: National Enterprises, Inc. and MA No. 2, LLC, TSCA-01-2009-0059
Consent Agreement and Final Order

For Respondent, National Enterprises, Inc.:



Signature

David W. Witek
President

Print Name and Title

Date: 10/29/09



In re: National Enterprises, Inc. and MA No. 2, LLC, TSCA-01-2009-0059
Consent Agreement and Final Order

For Respondent, MA No. 2, LLC:



Signature

David Wick - Agent

Print Name and Title

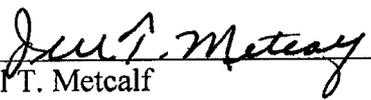
Date: 10/29/09



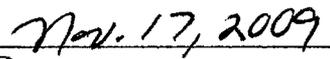
In re: National Enterprises, Inc. and MA No. 2, LLC, TSCA-01-2009-0059
Consent Agreement and Final Order

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondents are hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



Jill T. Metcalf
Acting Regional Judicial Officer
U.S. EPA - Region 1



Date



In re: National Enterprises, Inc. and MA No. 2, LLC
TSCA-01-2009-00579

CERTIFICATE OF SERVICE

I, Hugh W. Martinez, hereby certify that on this 18th day of November 2009, I caused the foregoing Consent Agreement and Final Order, along with a cover letter to the Regional Hearing Clerk, to be served on the following persons in the manner indicated:

Original and One Copy by Hand Delivery

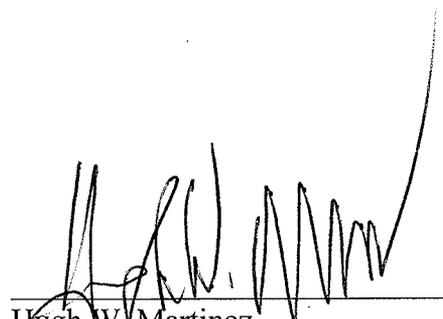
Judy Lao-Ruiz, Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

One Copy by Fax [202-565-0044] and Pouch Mail

The Honorable Susan L. Biro
Chief Administrative Law Judge and Presiding Officer
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

One Copy, Electronically (.pdf by e-mail) and by Federal Express

Edward A. Kendall, Jr., Esquire
Curley & Curley
27 School Street
Boston, MA 02108



Hugh W. Martinez
Senior Enforcement Counsel
EPA Region 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 1 - NEW ENGLAND
1 Congress Street, Suite 1100
Boston, MA 02114-2023

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OFFICE OF
ENVIRONMENTAL STEWARDSHIP

REC'D
CLERK

HUGH W. MARTINEZ
Direct: 617-918-1867

BY HAND

November 18, 2009

Judy Lao-Ruiz, Acting Regional Hearing Clerk
EPA Region 1 - New England
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

Re: In the Matter of: National Enterprises, Inc. et al., Docket No. TSCA-01-2009-0059
Consent Agreement and Final Order

Dear Ms. Lao-Ruiz:

Please find enclosed for filing the original and one copy of a fully executed Consent Agreement and Final Order concluding the above-entitled case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the Complaint and Notice of Opportunity for Administrative Hearing was mailed to Respondents, in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,

Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: Edward A. Kendall, Jr., Counsel for Respondents National and MA No. 2

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Judy Lao for Hugh W. Martinez 11/18/09
Name of Case Attorney Date

in the ORC (RAA) at 918-1454
Office & Mail Code Phone number

Case Docket Number TSCA-01-2009-0059

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

NATIONAL ENTERPRISES, INC.
5440 Morehouse Drive, Suite 4000
San Diego, California

and

MA NO. 2, LLC
5440 Morehouse Drive, Suite 4000
San Diego, California

Total Dollar Amount of Receivable \$ 10,000.00 Due Date: 12/17/09

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2ND \$ _____ on _____
- 3RD \$ _____ on _____
- 4TH \$ _____ on _____
- 5TH \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____