

1 SYLVIA A. QUAST  
Regional Counsel  
2  
3 EDGAR P. CORAL  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
4 Region IX  
75 Hawthorne Street  
5 San Francisco, CA 94105  
(415) 972-3898  
6 coral.edgar@epa.gov

**\*\* FILED \*\***  
25DEC2018 - 01:27PM  
U.S.EPA - Region 09

7  
8 UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10  
11 In the matter of: ) Docket No. TSCA-09-2018-0007  
12 )  
McNamara Realty, )  
13 ) CONSENT AGREEMENT  
AND FINAL ORDER  
14 Respondent. ) pursuant to 40 C.F.R. § 22.18(b)  
15 )

---

16 I. CONSENT AGREEMENT

17 Complainant, the Chief of the Waste and Chemical Section in the Air, Waste, and Toxics  
18 Branch of the Enforcement Division in the United States Environmental Protection Agency,  
19 Region IX (“EPA”), and Respondent, McNamara Realty, agree to settle this civil administrative  
20 action brought under the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 *et seq.*,  
21 and consent to the entry of this Consent Agreement and Final Order (the “CAFO”).

22 A. AUTHORITY

23 1. Complainant initiated this civil administrative proceeding for the assessment of a civil  
24 penalty against Respondent under TSCA pursuant to Section 16(a), 15 U.S.C. § 2615(a), and the  
25 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40  
26 C.F.R. Part 22, by issuing a First Amended Complaint and Notice of Opportunity for Hearing  
27 (“the First Amended Complaint”) against Respondent on November 30, 2018.  
28

1           2. The Complaint alleges that Respondent violated Section 409 of TSCA, 15 U.S.C. §  
2 2689, by failing to comply with Section 1018 of Title X of the Residential Lead-Based Paint  
3 Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and federal regulations promulgated to  
4 implement Section 1018 at 40 C.F.R. Part 745, Subpart F.

5           3. Complainant and Respondent have agreed to resolve this civil administrative  
6 proceeding arising under TSCA by executing this CAFO.

7                           B. RESPONDENT'S ADMISSIONS

8           4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
9 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
10 Respondent; (ii) neither admits nor denies the specific factual allegations contained in the First  
11 Amended Complaint; (iii) consents to any and all conditions specified in this CAFO and to the  
12 assessment of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any  
13 right to contest the allegations contained in the First Amended Complaint; and (v) waives the right  
14 to appeal the proposed Final Order contained in this CAFO.

15                           C. CIVIL ADMINISTRATIVE PENALTY

16           5. In settlement of the violations specifically alleged in the First Amended Complaint,  
17 Respondent shall pay a civil administrative penalty of THIRTY-TWO THOUSAND DOLLARS  
18 (\$32,000). Respondent shall pay this civil penalty within thirty (30) days of the effective date of  
19 this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including  
20 the name and docket number of this case, for the amount, payable to "Treasurer, United States of  
21 America," (or be paid by one of the other methods listed below) and sent as follows:

22                                   Regular Mail:

23                                   U.S. Environmental Protection Agency  
24                                   Fines and Penalties  
25                                   Cincinnati Finance Center  
26                                   PO Box 979077  
27                                   St. Louis, MO 63197-9000

28                                   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

1 SWIFT address = FRNYUS33  
2 33 Liberty Street  
3 New York, NY 10045  
4 Field Tag 4200 of the Fedwire message should read "D 68010727  
5 Environmental Protection Agency"

6 Overnight Mail:

7 U.S. Bank  
8 1005 Convention Plaza  
9 Mail Station SL-MO-C2GL  
10 ATTN Box 979077  
11 St. Louis, MO 63101

12 ACH (also known as REX or remittance express):

13 Automated Clearinghouse (ACH) for receiving U.S. currency  
14 PNC Bank  
15 808 17<sup>th</sup> Street, NW  
16 Washington, DC 20074 ABA = 051036706  
17 Transaction Code 22 – checking  
18 Environmental Protection Agency  
19 Account 310006  
20 CTX Format

21 On Line Payment:

22 This payment option can be accessed from the information below:  
23 [www.pay.gov](http://www.pay.gov)  
24 Enter "SFO1.1" in the search field  
25 Open form and complete required fields

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

28 A copy of each 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 docket number, 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

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

1           6. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
2 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
3 use such payment as a tax deduction.

4           7. If Respondent fails to pay the assessed civil administrative penalty of THIRTY-TWO  
5 THOUSAND DOLLARS (\$32,000), as identified in Paragraph 5, by the deadline specified in that  
6 Paragraph, then Respondent shall pay a stipulated penalty to EPA of \$500 per day in addition to  
7 the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and  
8 all accrued stipulated penalties are paid and shall become due and payable upon EPA's written  
9 request. Failure to pay the civil administrative penalty specified in Paragraph 5 by the deadline  
10 specified in that Paragraph may also lead to any or all of the following actions:

11                       (1) EPA may refer the debt to a credit reporting agency, a collection  
12 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
13 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
14 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
15 collection proceeding.

16                       (2) The U.S. Government may collect the debt by administrative offset  
17 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a  
18 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
19 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
20 C.F.R. §§ 13(C) and 13(H).

21                       (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
22 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
23 business with EPA or engaging in programs EPA sponsors or funds.

24                       (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
25 Government may assess interest, administrative handling charges, and nonpayment penalties  
26 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
27 civil administrative penalty specified in Paragraph 5 by the deadline specified in that Paragraph.

28                       (a)     Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.

1 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
2 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
3 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
4 (30) days of the effective date of this CAFO.

5 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
6 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
7 based on either actual or average cost incurred (including both direct and indirect costs), for every  
8 month in which any portion of the assessed penalty is more than thirty (30) days past due.

9 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
10 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually, may  
11 be assessed on all debts more than ninety (90) days delinquent.

#### 12 D. CERTIFICATION OF COMPLIANCE

13 8. In executing this CAFO, Respondent certifies that it is now fully in compliance with  
14 Section 1018 and federal regulations promulgated to implement Section 1018 at 40 C.F.R. Part  
15 745, Subpart F.

#### 16 E. RETENTION OF RIGHTS

17 9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
18 liabilities for federal civil penalties for the violation and facts specifically alleged in the First  
19 Amended Complaint. Nothing in this CAFO is intended to or shall be construed to resolve: (i)  
20 any civil liability for violations of any provision of any federal, state, or local law, statute,  
21 regulation, rule, ordinance, or permit not specifically alleged in the First Amended Complaint; or  
22 (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies  
23 available to it (including, but not limited to, injunctive or other equitable relief or criminal  
24 sanctions) to address any violation of this CAFO or any violation not specifically alleged in the  
25 First Amended Complaint.

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

1 F. ATTORNEYS' FEES AND COSTS

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

4 G. EFFECTIVE DATE

5 12. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
6 effective on the date that the Final Order contained in this CAFO, having been approved and  
7 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

8 H. BINDING EFFECT

9 13. The undersigned representative of Complainant and the undersigned representative of  
10 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
11 of this CAFO and to bind the party he or she represents to this CAFO.

12 14. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
13 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
14 and assigns.

15  
16  
17 FOR RESPONDENT McNAMARA REALTY:

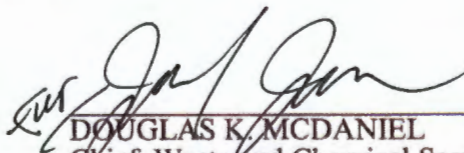
18  
19 Dec 17 '18  
DATE



Michael P. McNamara  
Owner  
McNamara Realty

20  
21  
22 FOR COMPLAINANT EPA:

23  
24 12/20/18  
DATE



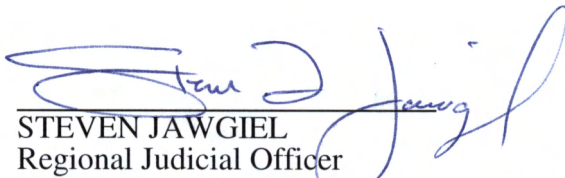
DOUGLAS K. MCDANIEL  
Chief, Waste and Chemical Section  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and McNamara Realty having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2018-0007) be  
4 entered, and Respondent shall pay a civil administrative penalty in the amount of THIRTY-TWO  
5 THOUSAND DOLLARS (\$32,000), and comply with the terms and conditions set forth in the  
6 Consent Agreement.

7  
8  
9 12/26/18  
10 DATE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

**CERTIFICATE OF SERVICE**

I hereby certify the attached Consent Agreement and Final Order in the matter of McNamara Realty [Docket Number: TS&CA-09-2018-0007] has been filed by the Regional Hearing Clerk, and was served on the following parties as indicated below:

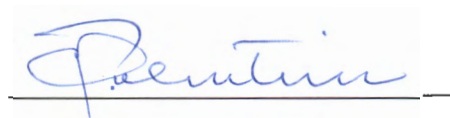
Certified Mail: 7015 3010 0000 3883 7189

Respondent(s): Michael McNamara  
McNamara Realty  
390 Higuera St, #B  
San Luis Obispo, CA 93401

Mail Box

Complainant: Edgar Coral  
Assistant Regional Counsel  
U.S. EPA Region IX (ORC-2)  
75 Hawthorne Street  
San Francisco, CA 94105

Dated at San Francisco, California, this 26 of December, 2018



Corazon Tolentino  
Acting Regional Hearing Clerk  
U.S. EPA, Region IX  
75 Hawthorne Street, 12<sup>th</sup> Floor (ORC)  
San Francisco, CA 94105