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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 17th 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
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.

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17 FOR RESPONDENT McNAMARA REALTY:

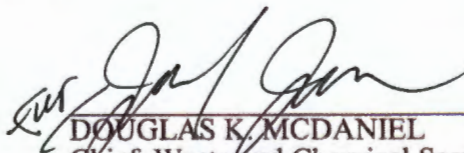
18
19 Dec 17 '18
DATE



Michael P. McNamara
Owner
McNamara Realty

20
21
22 FOR COMPLAINANT EPA:

23
24 12/20/18
DATE



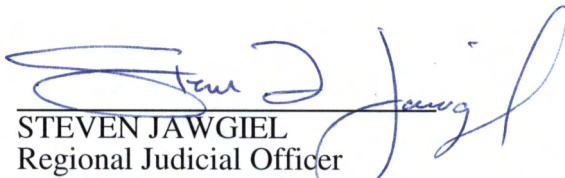
DOUGLAS K. MCDANIEL
Chief, Waste and Chemical Section
Enforcement Division
U.S. Environmental Protection Agency, Region IX

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.

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8
9 12/26/18
10 DATE

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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:

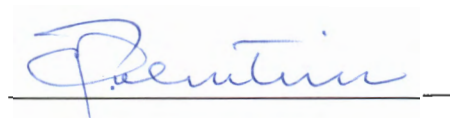
Certified Mail: 7015 3010 0000 3883 7189

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, 12th Floor (ORC)
San Francisco, CA 94105