



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 10 2012

CERTIFIED MAIL --  
RETURN RECEIPT REQUESTED

Mr. Wayne Mackey  
Training Manager  
Laborers' International Union of North America Local 17 Training and Educational Trust  
451C Little Britain Road  
Newburgh, NY 12550

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II  
2012 SEP 10 AM 10:50  
REGIONAL HEARING CLERK

Re: Laborers' International Union of North America Local 17 Training and Educational Trust Fund, Docket No. TSCA-02-2012-9269

Dear Mr. Mackey,

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the United States Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of the date on which the Regional Judicial Officer signed the enclosed Consent Agreement and Final Order. Please arrange for payment of this penalty according to the schedule and instructions given in the Order.

Sincerely yours,

Stuart N. Keith  
Assistant Regional Counsel  
Waste & Toxic Substances Branch  
Office of Regional Counsel

Enclosures

cc: Karen Maples  
Regional Hearing Clerk

bcc: Coles Phinizy (2ORC)  
Stuart Keith (2ORC)  
Linda Hall (2PTSB)  
Meghan Tierney (2PTSB)  
Elias Rodriguez (2PAD)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2012 SEP 10 A 10:50  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
: CONSENT AGREEMENT  
: AND  
**Laborers International Union of North** :  
**America Local 17 Training and** :  
**Educational Trust Fund,** : FINAL ORDER  
Respondent. :  
: Docket No.  
Proceeding under Section 16(a) of : TSCA-02-2012-9269  
the Toxic Substances Control Act. :  
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The "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" at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules of Practice") provide in 40 C.F.R. Section 22.13(b) that where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. Section 22.18(b)(2) and (3).

On January 9, 2012, the Chief of the Pesticides and Toxic Substances Branch, Division of

Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”), issued an Opportunity to Show Cause Letter for Violations of the Toxic Substances Control Act (“Show Cause Letter”) to Respondent Laborers’ International Union of North America Local 17 Training and Educational Trust Fund, (“Respondent”), whose primary place of business is located at 451-C Little Britain Road, Newburgh, New York 12550. The Show Cause for TSCA Violations letter alleged that Respondent failed to ensure compliance with provisions of 40 C.F.R. § 745.225 on June 2, 2010 in three ways including the failure to issue accurate interim course completion certifications. Any failure or refusal to ensure compliance with the regulations cited constitutes a failure or refusal to comply with 40 C.F.R. § 745.225 which is a violation of 42 U.S.C. Section 4852d(b)(5) and TSCA Section 409, 15 U.S.C. § 2689. Subsequently, Respondent brought additional information to EPA’s attention which led EPA to limit its allegation to the above-described failure.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. Section 22.13(b) and 40 C.F.R. Section 22.18(b)(2) and (3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

#### FINDINGS OF FACT

1. Respondent is Laborers’ International Union of North America Local 17 Training and Educational Trust Fund.
2. Respondent’s primary place of business is located at 451-C Little Britain Road, Newburgh, New York 12550.

3. On or about January 24, 2011, duly designated representatives of the EPA conducted an inspection of Respondent's training program activities at 451-C Little Britain Road, Newburgh, New York 12550, hereinafter "the inspection".

4. As a result of the inspection, EPA determined that Respondent was a firm performing training which had, while conducting a lead abatement training course on June 2, 2010, failed to ensure that accurate interim course completion certifications were issued to trainees, as required by 40 C.F.R. § 745.225(c)(8)(iv). Said certifications had been issued to expire in three years rather than the six month specified in the regulation.

5. On May 7, 2012, the parties met for an informal settlement conference and negotiated this settlement.

#### CONCLUSIONS OF LAW

1. Respondent, a firm that engages in lead abatement training, is subject to the regulations and requirements pertaining to lead-based paint promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart L.

2. Based on the Respondent's failure to ensure that accurate interim course completion certifications were issued to trainees as required by 40 C.F.R. § 745.225(c)(8)(iv), EPA contends Respondent committed a violation of 40 C.F.R. § 745.225(c)(8)(iv) which is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. § 2614 and § 2689.

#### TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by

and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent certifies that it has retrieved or will attempt to retrieve all previously issued course completion certificates which are inaccurate and has or will issue proper certificates. In addition, Respondent certifies that it has put into effect procedures to ensure that course completion certificates are issued in accordance with 40 C.F.R. § 745.225(c)(8) and are reviewed for accuracy and compliance with regulatory requirements. Respondent agrees to provide EPA with copies of all course completion certificates for a period of one year after the date of the signature of the Final Order at the end of this document.

2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual determinations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the contention set forth in paragraph 2 of the "Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **TWENTY SEVEN HUNDRED DOLLARS (\$2,700.00)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

Alternatively, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Laborers International Union of North America Local 17 Training and Educational Trust Fund
- 7) Docket Number TSCA-02-2012-9269

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date"). Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

and

Meghan Tierney, Lead Team  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-225  
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt

Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims alleged in Paragraph 4 of the Finding of Fact and Paragraph 2 of the Conclusions of Law set forth above. Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of the law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on the determination contained in the "Findings of Fact" section, and in the "Conclusions of Law" section. Respondent further waives its right otherwise to contest all such determinations.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or



the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Each party shall bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**Laborers International Union of North  
America Local 17 Training and  
Educational Trust Fund,**

RESPONDENT:

BY: Wayne K Mackey

NAME: WAYNE K MACKAY  
(PLEASE PRINT)

TITLE: Training Director

DATE: 8/13/12

COMPLAINANT:

Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway  
New York, New York 10007

DATE: AUGUST 23, 2012

In the Matter of Laborers International Union of North America Local 17 Training and Educational Trust Fund, Docket Number TSCA-02-2012-9269

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Laborers International Union of North America Local 17 Training and Educational Trust Fund, bearing Docket Number TSCA-02-2012-9269. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.

DATE: September 7, 2012

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

In the Matter of Laborers International Union of North America Local 17 Training and Educational Trust Fund, Docket Number TSCA-02-2012-9269

**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.  
U.S. EPA- Region II  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Mr. Wayne Mackey, Training Manger  
Laborers International Union of North America Local 17 Training and Educational Trust Fund  
451C Little Britain Road  
Newburgh, New York 12550

Dated: SEP 10 2012  
New York, New York

Mildred N. Bay