



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

AUG 15 2017

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Benjamin Tyler  
Owner  
Ben Tyler Building & Remodeling, Inc.  
1115 Lexington Road  
Louisville, Kentucky 40204

Re: Ben Tyler Building & Remodeling, Inc.  
Ratified Consent Agreement and Final Order  
Docket No. TSCA-04-2017-2536(b)

Dear Mr. Tyler:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Shanika Pennamon of the EPA staff at (404) 562-9213 or email [pennamon.shanika@epa.gov](mailto:pennamon.shanika@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "AToney", written over a horizontal line.

Anthony G. Toney  
Chief

Chemical Safety & Enforcement Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
Ben Tyler Building & Remodeling, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.: TSCA-04-2017-2536(b)

USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL  
2017 AUG 15 PM 3:35  
HEARING CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) is vested in the Administrator of the United States Environmental Protection Agency. The Administrator of the EPA has delegated this authority under TSCA to the Regional Administrator of the EPA Region 4 by the EPA Delegation 12-2-A, dated May 11, 1994. The Regional Administrator of the EPA Region 4 has re-delegated this authority under TSCA to the Director of the Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 12-2-A, dated January 14, 2009. In accordance with 40 C.F.R. § 22.3(a), the Complainant in this matter is the Director of the Air, Pesticides and Toxics Management Division. Respondent is Ben Tyler Building & Remodeling, Inc., a company doing business in the Commonwealth of Kentucky.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. Pursuant to Sections 402 and 406 of TSCA, 15 U.S.C. §§ 2682 and 2686, the Administrator of the EPA promulgated Residential Property Renovation Rules at 40 C.F.R. Part 745, Subpart E including the Pre-Renovation Education Rule, the Renovation, Repair and Painting Rule, and the Lead-Based Paint Activities Rule. It is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, for any person to fail or refuse to comply with any of the rules issued under 40 C.F.R. Part 745, Subpart E.

## **III. Specific Allegations**

4. Respondent is a “firm” that performs “renovations” for compensation as those terms are defined, by 40 C.F.R. § 745.83. Based on a review of Respondent’s records during an EPA inspection at Respondent’s office on April 27, 2017, the EPA determined that between May 28, 2015 and February 24, 2017, Respondent performed renovation activities at six (6) separate locations in the Louisville, Kentucky area. The residential units are “target housing,” as that term is defined by 40 C.F.R. § 745.103. At the time Respondent performed these renovations, Respondent’s certification to perform renovations under 40 C.F.R. Part 745 had expired.
5. Pursuant to 40 C.F.R. § 745.89(a), firms seeking to perform renovations for compensation must apply to the EPA for certification to perform renovations or dust sampling. Pursuant to 40 C.F.R.

§ 745.89(b)(1)(i), after a firm has received certification, it must be recertified every five (5) years by filing a complete application for re-certification at least 90 days prior to the expiration of the firm's current certification. Pursuant to 40 C.F.R § 745.89(b)(1)(iii), if the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to 40 C.F.R. §745.89(a).

6. Information obtained by the EPA during the above-referenced inspection showed that Respondent's certification expired on May 20, 2015, but Respondent did not submit an application for recertification at least 90 days prior to the expiration date. Based on information provided by Respondent to the EPA, dated April 24, 2017, pursuant to 40 C.F.R. § 745.89(b)(1)(i), the EPA alleges that the Respondent violated Sections 402 and 406 of TSCA and 40 C.F.R. Part 745, Subpart E, in connection with the renovation described in paragraph 4, as follows:

Respondent failed to stop renovations or dust sampling before obtaining recertification under 40 C.F.R. §745.89(a), pursuant to 40 C.F.R. §745.89(b)(1)(iii).

#### **IV. Consent Agreement**

7. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
8. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the Final Order accompanying the Consent Agreement.
9. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in the Final Order section of this CAFO.
10. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart E.

11. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

**V. Final Order**

12. Respondent is assessed a civil penalty of **FOUR HUNDRED THIRTY-NINE DOLLARS (\$439)** which shall be paid within thirty (30) days after the effective date of this CAFO.
13. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America."

**The Respondent shall note on the face of the check the Respondent's Name and the Docket Number TSCA-04-2017-2536(b).**

The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (USPS) (excluding USPS overnight mail):

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

Address for payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

Contact Phone Number: (314) 425-1819

14. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Ms. Shanieka Pennamon  
Lead and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

15. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
16. Pursuant to 31 U.S.C. § 3717, the 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 the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 30 days of the due date.
17. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
18. This CAFO shall be binding upon the Respondent, its successors and assigns.
19. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

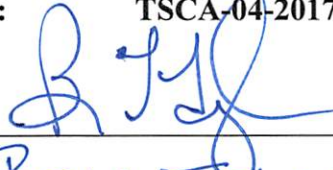
**VI. Effective Date**

20. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent: Ben Tyler Building & Remodeling, Inc.**

**Docket No.: TSCA-04-2017-2536(b)**

By:  (Signed) Date: 7/20/17

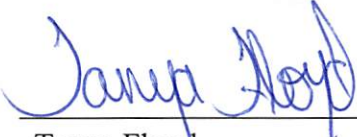
Name: BEN L TYLER (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

**Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY**

By:  Date: 8/3/2017  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

**APPROVED AND SO ORDERED** this 15<sup>th</sup> day of August, 2017.

By:   
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Ben Tyler Building & Remodeling, Inc., Docket Number: TSCA-04-2017-2536(b), to the addressees listed below:

Mr. Benjamin Tyler (via Certified Mail, Return Receipt Requested)  
Owner  
Ben Tyler Building & Remodeling, Inc.  
1115 Lexington Road  
Louisville, Kentucky 40204

Ms. Shanieka Pennamon (via the EPA's internal mail)  
Lead and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Mr. Robert Caplan, Senior Attorney (via the EPA's internal mail)  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511

Date: 8-15-17