



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

2890 WOODBRIDGE AVE
EDISON, NEW JERSEY 08837

MAY 20 2011

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Article Number: 7001 0320 0004 7789 9847

Mr. John Brandquist
Abax Incorporated
51-09 Second Street
Long Island City, New York 11101

Re: In the Matter of **Abax Incorporated**
Docket No. TSCA-02-2011-9266

Dear Mr. Brandquist:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the United States Environmental Protection Agency, Region 2 (EPA).

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Meghan Tierney of my staff at (732) 906-6832 or tierney.meghan@epa.gov if you have any questions regarding this matter.

Sincerely,

Dennis J. McChesney / by CHP
Dennis J. McChesney, Ph.D., MBA
Acting Chief
Pesticides and Toxic Substances Branch

Enclosure

U.S. ENVIRONMENTAL PROTECTION AGENCY
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RECEIVED
OFFICE OF THE REGIONAL JUDICIAL OFFICER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
In the Matter of :
 :
 : CONSENT AGREEMENT
 Abax Incorporated, : AND
 : FINAL ORDER
 Respondent. :
 :
 : Docket No.
 Proceeding under Section 16(a) of : TSCA-02-2011-9266
 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 and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2000) (hereinafter "Consolidated Rules"), provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle 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 ("CAFO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Abax Incorporated (hereinafter "Respondent") violated Section 402 of TSCA, 15 U.S.C. § 2682, and

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGIONAL HEARING
CLERK
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the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 745, relating to lead-based paint ("LBP").

EPA and Respondent agree that settling this matter by entering into this CAFO pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent is Abax Incorporated.
2. Respondent owns, operates, and/or controls the facility in and around 51-09 Second Street, Long Island City, New York 11101 (hereinafter "Respondent's facility").
3. On or about December 7, 2009, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility.
4. The inspection referenced in paragraph 3, above, is hereinafter referred to as "the inspection".
5. As a result of the inspection, EPA determined that Respondent failed to develop occupant protection plans for four lead-based paint abatements performed in target housing during 2009 in accordance with the specifications and requirements of 40 C.F.R. § 745.227(e).
6. On or about August 10, 2010, Complainant sent to Respondent a "Notice of Opportunity Related to Enforcement Action Under The Toxic Substances Control Act ", which alleged that Respondent had violated the LBP regulations at 40 C.F.R. Part 745 by failing to prepare occupant protection plans for lead abatement projects conducted at the following

addresses: 30 Irving Avenue, Brooklyn, N.Y.; 558 Central Avenue, Brooklyn, N.Y.; 2561 Bronxwood Avenue, Bronx, N.Y.; and 298 East 150th Street, Bronx, N.Y.

7. On December 15, 2010, January 5, 2011, January 26, 2011, and February 9, 2011, the parties met for informal settlement conferences.

CONCLUSIONS OF LAW

1. Respondent 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.

2. Respondent is a "certified firm" within the meaning of 40 C.F.R. § 745.223.

3. Failure to develop occupant protection plans for lead-based paint abatements performed in target housing is a violation of 40 C.F.R. Section 745.227(e) and Section 409 of TSCA, 15 U.S.C. § 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 shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

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 allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **TWELVE THOUSAND SIX HUNDRED DOLLARS (\$12,600)** 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) Name of Respondent
- 7) Docket Number

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, 16th Floor
New York, New York 10007

and

Theresa Bourbon, Lead Team
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
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 this matter. 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 assertions contained in the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

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

RESPONDENT:

BY: Edward Morales, President

NAME: Edward Morales
(PLEASE PRINT)

TITLE: PRESIDENT

DATE: 4-28-11

COMPLAINANT:

[Signature]

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

DATE: MAY 10, 2011

In the Matter of Abax Incorporated
Docket Number TSCA-02-2011-9266

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 Abax Incorporated, bearing Docket Number TSCA-02-2011-9266. 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 402 of the Toxic Substances Control Act, 15 U.S.C. § 2682.

DATE: May 11, 2011

Helen S Ferrara

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

In the Matter of Abax Incorporated
Docket No. TSCA-02-2011-9266

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 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

John Brandquist
Abax Incorporated
51 – 09 Second Street
Long Island City, NY 11101

Dated: MAY 20 2011
New York, New York

Suzanne N. Bag