



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 17 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article Number: 7015 0640 0001 0675 8891

Mr. Robert Pavlovich
New York Environmental Systems, Inc.
368 Richardson Street.
Brooklyn, NY 11222


Re: In the Matter of NYES Environmental Systems, Inc.
Docket No. TSCA-02-2017-9279

Dear Mr. Pavlovich:

Enclosed please find a fully executed Final Order issued by the Regional Judicial Officer, US EPA Region 2. Payment of the penalty has been received and will be forwarded to the Department of the Treasury.

Thank you for your assistance.

Sincerely,

 Carl R. Howard
Assistant Regional Counsel

Enc.

2017 MAR 17 AM 10:47
U.S. Environmental Protection Agency
REGIONAL JUDICIAL OFFICER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

RECEIVED
03/17/17 11:10 AM
U.S. Environmental Protection Agency

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: In the Matter of :
: :
: **New York Environmental Systems, Inc.** : CONSENT AGREEMENT
: : AND
: : FINAL ORDER
: Respondent :
: :
: Proceeding under Section 16(a) of : Docket No.
: the Toxic Substances Control Act : TSCA-02-2017-9279
: :
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), as amended, ("TSCA" or "the Act"), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 Code of Federal Regulations ("C.F.R.") Part 22 (hereinafter "Consolidated Rules of Practice"). Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, 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 ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is New York Environmental Systems, Inc. (hereinafter “Respondent” or “NYES”).
2. Respondent’s primary place of business is located at 368 Richardson Street, Brooklyn, NY 11222.
3. Respondent is a “certified firm” as that term is defined at 40 C.F.R. § 745.223.
4. 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 out at 40 C.F.R. Part 745, Subpart L (“Lead-Based Paint Activities”) (the “LBP Rule”).
5. The LBP Rule requires that firms conducting abatements (as defined at 40 C.F.R. § 745.223) must undertake such abatements in accordance with the work practice standards of 40 C.F.R. Part 745, Subpart L.
6. Under Section 409 of TSCA, 15 U.S.C. § 2689, it is a violation for a firm conducting lead-based paint activities, subject to the requirements of 40 C.F.R. Part 745, to violate any requirement of the LBP Rule.
7. From at least September 24, 2014, to December 18, 2014, Respondent conducted abatement activities in a private residence located at 55 Bethune Street, New York, NY 10014 (the “Property”).
8. On September 14, 2014, EPA received a complaint regarding on-going abatement work at the Property. As a follow-up to the complaint, EPA issued an Information Request Letter (IRL) to Respondent pertaining to the abatement activities it had undertaken at the Property.
9. Based on Respondent’s reply to the IRL, EPA made a preliminary determination that Respondent may have violated 40 C.F.R. § 745.227(e)(5) by failing to develop a written Occupant Protection Plan (OPP).

10. Respondent's failure to comply with the provisions of the LBP Rule, as described in the previous paragraph, constitutes a violation of §§ 402 and 409 of TSCA, 15 U.S.C. §§ 2682 and 2689, for which a penalty may be assessed.

11. On December 14, 2016, the parties met in an informal settlement conference. At this conference, and in a subsequent submission dated January 9, 2017, Respondent presented information and documentation to EPA showing that Respondent had prepared site-specific OPPs, but had not provided such records to EPA when requested.

12. Respondent's failure to provide records as described above is a violation of the LBP Rule, specifically 40 CFR § 745.235(b), and a violation of §§ 402 and 409 of TSCA, 15 U.S.C. §§ 2682 and 2689, for which a penalty may be assessed.

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 maintain compliance with all applicable statutory provisions of TSCA, 15 U.S.C. § 2601 et seq. and its implementing regulations.

2. Respondent certifies that it is currently in compliance with the statutory provisions of TSCA and the LBP Rule codified at 40 C.F.R. § 745, Subpart L.

3. 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 described in the "Findings of Fact and Conclusions of Law" section, above, and (b) neither admits to nor denies the specific factual allegations contained in the "Findings of Fact and Conclusions of Law" section, above.

4. Respondent shall pay, by cashier's or certified check or electronic fund transfer, a civil penalty in the amount of **ONE THOUSAND FOUR HUNDRED TWENTY-EIGHT DOLLARS (\$1,428)**.

5. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer of the United States of America." Such check shall be identified with a notation of the name and docket number of this case, as 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, if Respondent chooses to pay by electronic fund transfer ("EFT"), 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 Code for Federal Reserve Bank of NY receiving payment: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read "**D 68010727 Environmental Protection Agency**"
- 6) Name of Respondent: **New York Environmental Systems, Inc.**
- 7) Case Docket Number **TSCA-02-2017- 9279**

6. The payment must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO. (The date by which the payment must be received shall hereinafter be referred to as the "due date").

- a) Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection or other appropriate action.

- b) Further, if any payment is not received on or before its 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.
- c) A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

7. Any responses, documentation, and other communications submitted in connection with this Consent Agreement shall be sent to:

Carl R. Howard, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Mr. Robert Pavlovich
New York Environmental Systems, Inc.
368 Richardson Street.
Brooklyn, NY 11222

8. The civil penalties and any stipulated penalties provided for herein are “penalt[ies]” within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

9. Full payment of the penalty described in paragraph 4 shall only resolve Respondent’s liability for federal civil penalties for the violation and facts described in paragraphs 11 - 12 in the above Findings of Fact and Conclusions of Law. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

10. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms.

11. Respondent consents to the issuance of the accompanying Final Order.

12. Respondent agrees that all terms of settlement are set forth herein.

13. 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.

14. 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 this Consent Agreement or on the Findings of Fact and Conclusions of Law herein or on the accompanying Final Order.

15. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this CA/FO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

16. Respondent waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

17. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulation, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and the regulations promulgated thereunder.

18. The signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

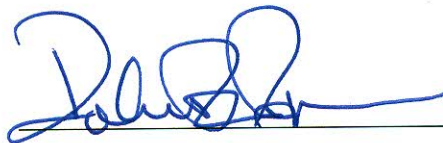
19. Each party hereto agrees to bear its own costs and fees in this matter.

20. Respondent consents to service upon itself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

New York Environmental Systems, Inc.

RESPONDENT:

BY:



NAME:

Robert R. Pavlowich (PLEASE PRINT)

President

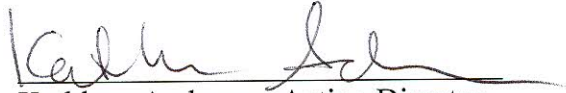
TITLE:

DATE:

3/08/17

In the Matter of New York Environmental Systems,
Docket Number TSCA-02-2017-9279

COMPLAINANT:



Kathleen Anderson, Acting Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

MAR 15 2017

DATE: _____

In the Matter of New York Environmental Systems,
Docket Number TSCA-02-2017-9279

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 New York Environmental Systems, Inc. bearing Docket Number TSCA-02-2017-9279. Said Consent Agreement, having been duly accepted and entered into by the parties is hereby ratified, incorporated into, and issued as this Final Order. The effective date of this Order shall be the date of filing 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.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

DATE: March 16, 2017

In the Matter of New York Environmental Systems, Inc.
Docket Number TSCA-02-2017-9279

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:


Karen Maples
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Mr. Robert Pavlovich
New York Environmental Systems, Inc.
368 Richardson Street.
Brooklyn, NY 11222

Dated:

3/17/2017
New York, New York

A handwritten signature in black ink, appearing to read 'Karen Maples', written over a horizontal line.