



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 01 2019

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Article Number: 7016 1370 0001 3673 9488

Michael Halberstam, Esq.
2314 Avenue O
Brooklyn, NY 11210

Re: In the Matter of Abatement Solutions LLC
Docket No. TSCA-02-2019-9270

Dear Mr. Halberstam:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2.

Please note that payment is due within thirty (30) days of signature of the Final Order by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given in the Consent Agreement.

If you have any questions, please contact the undersigned at 212-637-3195.

Very truly yours,

Gary H. Nurkin
Assistant Regional Counsel
Waste & Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

-----X
: :
In the Matter of : **CONSENT AGREEMENT AND**
: **FINAL ORDER**
: :
Abatement Solutions, LLC : :
: :
Respondent. : :
: :
Proceeding under Section 16(a) of : :
the Toxic Substances Control Act : :
-----X

Docket No. TSCA-02-2019-9270

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EPA REGION 2
RECEIVED

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, set out at 40 Code of Federal Regulations ("C.F.R.") Part 22. Pursuant to 40 C.F.R. § 22.13(b), 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. §§ 22.18(b)(2) and (3).

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the Administrator of EPA to enforce against persons who violate TSCA and its implementing regulations. That provision provides, in relevant part, that "[a]ny person who violates a provision of section 2614 or 2689 of this title [Sections 15 and 49 of TSCA, 15 U.S.C. §§ 2614 and 2689, respectively] shall be liable to the United States for a civil penalty... ." Complainant in this proceeding, the Director of the Enforcement & Compliance Assurance Division (Complainant) of EPA, Region 2, has been delegated the authority to prosecute this proceeding.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3), is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been made in or by an administrative or judicial tribunal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Abatement Solutions LLC ("Abatement Solutions" or "Respondent").

2. Abatement Solutions' primary place of business is 5314 16th Avenue, Suite 138, Brooklyn, New York 11204.
3. Abatement Solutions is a firm that engages (and has engaged at all relevant times) in the abatement of lead-based paint and is subject to the regulations and requirements pertaining to lead-based paint activities promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, and set forth at 40 C.F.R. Part 745, Subpart L ("Abatement Rule").
4. Respondent, at all times relevant herein, is and was a "person" as that term is defined at 40 C.F.R. § 745.223.
5. Beginning on or about March 26, 2017, and continuing through March 30, 2017, Abatement Solutions conducted an abatement of lead-based paint at a residence situated at 1690 President Street, Apartment A2, Brooklyn, NY 11213 ("President Street address").
6. The President Street address, at all times relevant herein, was "target housing" as that phrase is defined by Section 401 of TSCA, 15 U.S.C. § 2681 and 40 C.F.R. § 745.223.
7. Respondent's activities at the President Street address constituted "abatement" as that term is defined by 40 C.F.R. § 745.223.
8. On or about April 11, 2017, a representative of the United States Environmental Protection Agency, Region 2 ("EPA") initiated an investigation of the lead-based paint abatement activities Respondent conducted at the President Street address.
9. Based on the EPA investigation, upon information obtained from the New York City Department of Health and Mental Hygiene ("DOH") in relation to inspections conducted by DOH and the New York City Department of Housing Preservation and Development and lead samples the DOH took at the President Street address, and the Respondent's June 23, 2017 Response to an EPA Information Request Letter ("IRL") dated June 13, 2017, EPA determined that the lead-based paint abatement activities performed by Respondent at the President Street address were subject to the requirements of the Abatement Rule.
10. Based on review of the information described in paragraph 9, above, EPA further determined that Respondent failed to comply with certain requirements of the Abatement Rule in its conduct of lead-based paint abatement activities at the President Street address.
11. Respondent failed to notify EPA of lead-based paint activities at the President Street address in violation of 40 C.F.R. § 745.227(e)(4)(i).
12. Respondent's failure to comply with the requirements set forth at 40 C.F.R. Part 745, Subpart L constitutes a violation of TSCA § 409, 15 U.S.C. § 2689, for which penalties may be assessed under TSCA § 16(a), 15 U.S.C. § 2615(a).
13. On April 2, 2019, EPA held a settlement conference with Respondent to discuss EPA's findings regarding Respondent's alleged failures to comply with TSCA and the

Abatement Rule requirements during its lead-based paint abatement activities at the President Street address.

14. On or about April 10, 2019, Respondent submitted to EPA documentation of its gross annual income and other financial information.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18, it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; (b) neither admits nor denies the “Findings of Fact and Conclusions of Law” as set forth in this document; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives any right it may have to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the “effective date”). It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall, commencing on the date of the execution of the Final Order accompanying this Consent Agreement, maintain compliance with all applicable regulatory requirements of 40 C.F.R. Part 745, Subpart L.

2. Respondent shall pay a civil penalty to EPA in the amount of **SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$7,800)**. The civil penalty shall be paid within thirty (30) calendar days of the date the Regional Judicial Officer of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (the “due date”).

3. The payment, in accordance with the terms of this Consent Agreement, shall be made by cashier’s check, certified check or electronically via Fedwire. The payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier’s check or certified check, then each such check shall be *received* at the below-listed address on or before the date specified. If Respondent makes payments electronically, then each such electronic fund transfer shall be *received* on or before the date specified.

a. If payments are made by cashier’s check or by certified check, such check shall be made payable to the “**Treasurer, United States of America,**” shall be identified with a notation thereon listing the following: ***In re Abatement Solutions, LLC Docket Number TSCA-02-2019-9270***, and mailed to the following address:

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

b. Alternatively, if Respondent chooses to make payment electronically via Fedwire, Respondent shall then provide the following information to its remitter bank when such payment is being made:

- i. Amount of Payment;
- ii. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045;**
- iii. Account Code for Federal Reserve Bank of New York receiving payment: **68010727;**
- iv. Federal Reserve Bank of New York ABA routing number: **021030004;**
- v. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency;**
- vi. Name of Respondent: **Abatement Solutions, LLC;** and
- vii. Case docket number: **TSCA-02-2019-9270.**

4. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

5. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

- a. Interest. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is one percent (1%) per annum for calendar year 2018.
- b. Handling Charges: Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
- c. Late Payment Penalty Charge: A late penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days, 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). If

Respondent fails to make timely payment as set forth in paragraph 2 of this section, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, the administrative handling charges and late penalty charges described in paragraphs 6 and 7 below, in the event of any such failure or default and shall remit such payment in accordance with the payment instructions in paragraph 3 of this section, above.

6. The civil penalty provided for in this section (including any payment(s) for interest or late payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

7. Respondent certifies that it is in compliance with all applicable requirements of TSCA and its implementing regulations regarding Lead-Based Paint Activities found at 40 C.F.R. Part 745, Subpart L.

8. Respondent certifies that the information and documentation it submitted to EPA on April 10, 2019, regarding its finances and gross annual income is accurate, complete, and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement.

9. Respondent acknowledges its awareness that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondent's financial condition and gross annual income is false or, in any material respect, inaccurate.

10. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making payment of the entire amount of the civil penalty in accordance with the terms and schedule set forth above.

11. Respondent consents to service upon such representative by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2. Complainant shall mail to Respondent (or to its designated representative) a copy of the fully executed consent agreement and accompanying executed final order at the following address:

Michael Halberstam, Esq.
2314 Avenue O
Brooklyn, NY 11210

Delivery of the fully executed documents to the address in this paragraph shall constitute Respondent's receipt and acceptance of the CAFO.

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

Demian Ellis
Lead Enforcement Coordinator
Pesticides and Toxic Substances Compliance Branch
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue – MS 225
Edison, New Jersey 08837; and

Gary H. Nurkin
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Unless the above-named EPA contacts are subsequently advised in writing, EPA shall direct any future written communications to Respondent related to this proceeding, including any communications related to failure to make payment in accordance with the provisions of this CAFO, to the addressee noted in paragraph 11 of this section.

13. This CAFO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local laws and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

14. Full payment of the penalty amount set forth above in accordance with the terms herein, as well as any interest or late payment handling charges that accrue, shall only resolve Respondent's liability for federal civil penalties for the facts and violations described in paragraph 11 of the "Findings of Fact and Conclusions of Law" section, above. Nothing herein shall affect the authority of the EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to, *inter alia*, Respondent's conduct of lead-based paint abatement activities.

15. Respondent hereby waives its right to seek or to obtain any hearing on the administrative claims set forth in the Findings of Fact and Conclusions of Law of this document, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order.

16. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by the United States on behalf of EPA: (a) to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order

and may subject Respondent to a civil judicial action by the United State to enforce the provisions of this Consent Agreement and Final Order.

17. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

18. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of TSCA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

19. Nothing in this CAFO is intended or is to be construed to operate to resolve or serve as a defense to any criminal liability of Respondent for any TSCA violations, whether such violations occurred prior or subsequent to the filing of the Final Order accompanying this Consent Agreement.

20. If any requirement or obligation of this CAFO is held invalid or stayed by a court of competent jurisdiction, such action is not intended, and shall not, negate, abrogate or otherwise affect the validity and Respondent's obligation to comply with, and to maintain such compliance, with the remaining requirements and provisions of this CAFO.

21. Each party shall bear its own costs and fees in connection with this proceeding.

22. This CAFO is intended to, and shall, be fully binding upon the parties, their officers, directors, employees, successors and/or assigns (as applicable).

23. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and further, that they are authorized to bind the party on whose behalf they are signing to comply with the applicable terms, conditions, and requirements set forth in this Consent Agreement.

**In the Matter of Abatement Solutions LLC
Docket No. TSCA-02-2019-9270**

RESPONDENT:


BY: 
(Signature)

NAME: Natali Moskowitz
(Please Print)

TITLE: President

DATE: 7/9/19

COMPLAINANT:


Dore LaPosta, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

DATE: JUL 30 2019

In the Matter of Abatement Solutions LLC
Docket No. TSCA-02-2019-9270

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Abatement Solutions LLC*, bearing Docket Number TSCA-02-2019-9270. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect 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).



HELEN FERRARA
Regional Judicial Officer
United States Environmental Protection Agency –
Region 2

DATE: August 1, 2019

In the Matter of Abatement Solutions LLC
Docket No. TSCA-02-2019-9270

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing docket number TSCA-02-2019-9270, in the following manner to the respective addressees below:


Original and One Copy
By Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Michael Halberstam. Esq.
2314 Avenue O
Brooklyn, NY 11210

Dated: 8/11, 2019



Yolanda Majette
WTS Branch Secretary