

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

December 5, 2024 4:10 pm
USEPA – Region II
Regional Hearing Clerk

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In the Matter of	:	
Clean Air Environmental Services, Inc.	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND</u>
	:	<u>FINAL ORDER</u>
Respondent	:	Docket No.
	:	TSCA-02-2024-9276
Proceeding under Section 16(a) of	:	
the Toxic Substances Control Act	:	
-----X	:	

PRELIMINARY STATEMENT

This administrative proceeding was commenced 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, 40 C.F.R. Part 22.

EPA issued a complaint against Clean Air Environmental Services, Inc. (hereinafter "Respondent" or "CAES") on May 30th, 2024. The complaint alleged in six counts that Respondent had violated various regulatory provisions promulgated under the authority of TSCA. On June 26th, 2024, Respondent filed its answer in which it admitted various allegations and denied, in part, liability.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final order ("CAFO"), pursuant to 40 C.F.R. §§ 22.18(b)(2) and (b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

EPA FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. Respondent Clean Air Environmental Services, Inc. is a corporation organized under the laws of New York State.
2. Respondent's primary place of business is located at 215 ½ North Perry Street, Johnstown, NY, 12095.
3. Respondent at all times relevant herein was a "person" as defined by 40 C.F.R. §§ 745.83 and 745.223, a "firm" within the meaning of the RRP Rule, and a "certified firm" within the definition of the Abatement Rule.
4. At all relevant times, Respondent was engaged in business as a contractor providing "environmental services," including demolition, mold remediation, asbestos abatement, and "Lead Renovations."
5. From April 30, 2015 until May 14, 2021, Respondent was certified by EPA (Certification # NY/LBP-F153170-1) to conduct lead-based paint activities pursuant to 40 C.F.R. § 745.226.
6. On September 10, 2019, the EPA became aware of Respondent's work involving lead-based paint at a home located at 2 Union Street, Schenectady, NY 12305 ("2 Union Street"). Based on information received, the EPA issued an Information Request Letter ("IRL") in lieu of an on-site inspection to Respondent on September 24, 2019 containing questions pertaining to Lead-Based Paint Activities ("Abatement Rule"). Respondent submitted a response on October 28, 2019, in which it indicated that it considered the work to be a renovation.

7. Based on statements made regarding the work performed in CAES' Response to the Abatement Rule IRL, the EPA issued a second IRL to Respondent on November 6, 2019, containing questions pertaining to Renovation Activities (RRP Rule). Respondent submitted a response on December 18, 2019.

8. In light of the information submitted in response to the IRLs, EPA determined that Respondent had violated the Abatement Rule and the RRP Rule in its work at 2 Union Street and filed the administrative Complaint. In its Complaint, EPA alleged the following violations:

Count 1: Failure to ensure that abatement is conducted by a person certified by EPA, a violation of 40 C.F.R. § 745.227(e)(1);

Count 2: Failure to ensure that an abatement project has a certified supervisor who is onsite, a violation of 40 C.F.R. § 745.227(e)(2);

Count 3: Failure to notify EPA before engaging in abatement work, a violation of 40 C.F.R. § 745.227(e)(4)(ix);

Count 4: Failure to develop a written occupant protection plan in accordance with the regulatory requirements, a violation of 40 C.F.R. § 745.227(e)(5);

Count 5: Failure to perform post-abatement clearance procedures in accordance with regulatory requirements, a violation of 40 C.F.R. § 745.227(e)(8);

Count 6: Failure to prepare an abatement report, a violation of 40 C.F.R. § 745.227(e)(10); and

Count 7: Failure, of a firm that offers to or claims to perform renovations, to obtain certification from EPA, a violation of 40 C.F.R. § 745.81(a)(2)(ii).

9. Each of Respondent's failures to comply with the requirements of the Abatement Rule and the RRP Rule as identified in the preceding paragraph constitutes an independent violation of TSCA for which penalties may be individually 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, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent shall comply with the following terms:

10. For the purposes of this Consent Agreement, Respondent: (a) admits the jurisdictional allegations of the Complaint and the facts stipulated in this Consent Agreement; (b) consents to the assessment of the civil penalty as set forth below; (c) consents to the issuance of the Final Order incorporating all provisions of this Consent Agreement; (d) consents to any conditions specified herein and (e) waives any right it might possess to obtain judicial or administrative review of the Final Order accompanying this Consent Agreement.

11. Respondent agrees to hereinafter maintain compliance with all applicable statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and the implementing regulations codified at 40 C.F.R. Part 745.

Certifications

12. Respondent certifies that EPA has provided Respondent with information and compliance assistance regarding the requirements of the RRP Rule, codified at 40 C.F.R. Part 745 Subpart E, and of the Abatement Rule, codified at 40 C.F.R. Part 745 Subpart L, and of its compliance obligations under each. Respondent further certifies that it understands the difference between these Rules and its compliance obligations under each.

13. Respondent certifies that, as of the date of execution of this CAFO, it is in compliance with the statutory provisions of Subchapter IV of TSCA, 15 U.S.C. §§ 401 – 412, 15 U.S.C. §§ 2681 – 2692, and the implementing regulations codified at 40 C.F.R. Part 745.

Penalty

14. Respondent agrees to pay a civil penalty in the amount of **TWENTY THOUSAND DOLLARS (\$20,000.00)** (“Assessed Penalty”) *on or before* thirty (30) days from the date the Regional Administrator signs the Final Order.

15. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

16. When making a payment Respondent shall:

- a. Identify each payment with Respondent’s name and the docket number of this Agreement: *Clean Air Environmental Services, Inc., TSCA-02-2024-9276*.
- b. Concurrently with any payment or within twenty-four (24) hours of any payment, Respondent shall serve proof of any payment to the following persons:

Karen Maples
Regional Hearing Clerk
USEPA – Region 2
Maples.Karen@epa.gov

Demian Ellis, Enforcement Officer
USEPA – Region 2
Pesticides and Toxic Substances Compliance Branch
Ellis.Demian@epa.gov

Milton Wise
Fines & Penalties
Cincinnati Finance Center
P.O Box 979078
St. Louis, MO 63197-9000
Wise.Milton@epa.gov

c. “Proof of Payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, wire or confirmation of automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

17. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, the EPA is authorized to recover the following amounts.

a. *Interest.* Interest begins to accrue from the date on which the Regional Administrator signs the Final Order. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. *Handling Charges.* Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the date the

Regional Administrator signs the Final Order. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. *Late Payment Penalty.* A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the date the Regional Administrator signs the Final Order.

18. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following:

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

19. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

20. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

21. Respondent explicitly and knowingly agrees to pay the Assessed Penalty in accordance with the terms of this CAFO.

Compliance Actions

22. Respondent agrees to utilize the RRP Compliance Plan attached to this CAFO as Appendix A and herein incorporated by reference when conducting a Renovation, as that term is defined at 40 C.F.R. § 745.83, subject to the RRP Rule.

23. For any Renovation Respondent expects to commence in the 12 months following the date the Regional Administrator signs the Final Order, Respondent agrees to:

a. Give EPA no less than fifteen (15) days notice of the Renovation prior to its commencement. In its notification, Respondent will provide EPA with at least the following information and documents: address and age of the target housing to be renovated, the executed contract for the work to be performed (including the scope of work, if not specified in the contract), any lead testing results, if applicable, assigned

renovator(s), other individuals assigned, and the receipt for provision of the lead hazard information (Renovate Right) pamphlet to the owners/occupants of the target housing.

b. Grant EPA access to the job site for the purpose of conducting a compliance inspection, and

c. Submit to EPA documentation of compliance with the RRP Rule in the conduct of a Renovation, when the final invoice for the Renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier.

24. In the event Respondent does not undertake any RRP work in the twelve (12) months following the date the Regional Administrator signs the Final Order, it will submit to EPA a statement certifying to that fact within 30 days of the close of that period.

25. All documents submitted to EPA shall be signed by a responsible corporate official and certified under penalty of perjury.

26. Respondent shall be subject to stipulated penalties for the failure to provide timely notification of an upcoming RRP Renovation, the final compliance report for a completed Renovation or the required annual certification as follows:

- a. 1 – 30 days delinquent - \$100 per day
- b. 30 – 60 days delinquent - \$200 per day
- c. Each day past 61 days - \$400 per day

All Stipulated penalties are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of the penalties. Payment of the stipulated penalties shall be made in the same manner as prescribed in Paragraph 16 of this Consent Agreement, above, for payment of the Assessed Penalty. Stipulated penalties shall accrue as

provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment but need only be paid upon demand.

General Provisions

27. Nothing in this document is intended nor shall be construed to waive, prejudice or otherwise affect the right of the EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

28. Respondent's compliance with this Consent Agreement, including full payment of the Assessed Penalty, shall only resolve Respondent's liability for federal civil penalties for the violations described above. Full payment of the Assessed Penalty shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

29. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

30. Respondent agrees not to contest the validity or any term of this CAFO in any action brought: a) by the United States, including the EPA, to enforce this CAFO, or b) to enforce a judgment relating to this CAFO. Any failure by Respondent to perform fully any requirement

herein will be considered a violation of this CAFO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CAFO.

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

32. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted to the EPA in accordance with the terms and conditions of this CAFO shall be sent by electronic mail (unless not technically feasible given document type or size, then in hard copy) to the following:

Demian Ellis
Lead Paint & Pesticides Compliance Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2
Ellis.Demian@epa.gov

33. Unless the above-named EPA contact is later advised otherwise in writing, the EPA shall send by electronic mail any written communication related to this matter to Respondent's counsel at JFrancisco.law@gmail.com, copying Respondent at ABido@cleanaires.com and AWeigle@cleanaires.com. However, in cases where electronic mail is not feasible given document type or size, such correspondence will be mailed to the following:

Adam Bido
Clean Air Environmental Services, Inc.
215 ½ North Perry Street
Johnstown, NY 12095

34. Respondent consents to service of the fully-executed CAFO by electronic mail to the addressees listed in the preceding paragraph. Respondent consents to service upon it by an employee of the EPA other than the Regional Hearing Clerk.

35. Respondent has read the CAFO, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent agrees that all terms of settlement are set forth herein.

36. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

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

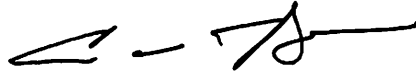
38. The provisions of this CAFO shall be binding upon Respondent, its officials, authorized representatives, and successors or assigns.

39. Respondent's signatory certifies to possessing due and full authorization to: (a) enter into and ratify this CAFO and all the terms, provisions, and requirements set forth in this CAFO; and (b) bind Respondent, its officials, authorized representatives, and successors or assigns to comply with and abide by all the terms, provisions, and requirements thereof.

40. The Parties agree that this Agreement may be signed electronically and in part and counterpart by each signatory.

Clean Air Environmental Services, Inc.

RESPONDENT:



(SIGNATURE)

NAME:

Adam Bido

(PLEASE PRINT)

TITLE:

President

COMPLAINANT:

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Clean Air Environmental Services, Inc., Docket Number TSCA-02-2024-9276. 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.

Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866