



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 29 2019

REPLY TO THE ATTENTION OF

ECP-17J

Mr. Ed Krieger
CEO
Ayers Basement Systems, LLC
2505 South Waverly Highway
Lansing, Michigan 48911

Consent Agreement and Final Order In the Matter of:
Ayers Basement Systems, LLC TSCA-05-2019-0010

Dear Mr. Krieger:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in Resolution of the above case. This document was filed on July 29, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$9,450 is to be paid in the manner described in Paragraphs 37 and 38. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

Pamela Grace
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Ayers Basement Systems, LLC
Lansing, Michigan,

Respondent.



Docket No. TSCA-05-2019-0010

Proceeding to Assess a Civil
Penalty Under Section 16(a) of the
Toxic Substances Control Act,
15 U.S.C. § 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is the Acting Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Ayers Basement Systems, LLC, a corporation with a place of business located at 2505 South Waverly Highway, Lansing, Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided in 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified in scattered sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, that apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and

commercial buildings that create lead-based paint hazards. These regulations prescribe work practice standards and ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified. These requirements are known as the Renovation, Repair, and Painting Program Rule (RRP Rule).

12. 40 C.F.R. § 745.82(a)(1) makes 40 C.F.R. Part 745, Subpart E applicable to renovations of target housing performed for compensation.

13. 40 C.F.R. § 745.83 defines “firm” to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

14. 40 C.F.R. § 745.83 defines “renovation” to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust); the removal of building components (e.g., walls, ceiling, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

15. 40 C.F.R. § 745.83 defines “renovator” to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has

successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

16. 40 C.F.R. § 745.103 defines “residential dwelling” to mean a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

17. 40 C.F.R. § 745.103 defines “target housing” to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

18. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

19. The Administrator of EPA may assess a civil penalty of up to \$38,892 for each violation of Section 409 of TSCA that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

20. At all times relevant to this Complaint, Respondent was a corporation with a place of business located at 2505 South Waverly Highway, Lansing, Michigan. Respondent is therefore a “firm” as defined by 40 C.F.R. § 745.83.

21. On February 5, 2016, Respondent performed or directed workers who performed contracted work for compensation at a “residential dwelling” located at 1410 Poxson Avenue, Lansing, Michigan.

22. The building listed at the address in the preceding paragraph was a “residential dwelling,” as defined in 40 C.F.R. § 745.103, built in 1949.

23. The building listed at the address in paragraph 21 was “target housing” as defined at 40 C.F.R. § 745.103.

24. On February 5, 2016, the contracted work for compensation that Respondent performed or directed at 1410 Poxson Avenue, Lansing, Michigan, included the disturbance and/or removal of lead-based paint.

25. The contracted work described in the preceding paragraphs was a “renovation” as defined in 40 C.F.R. § 745.83.

26. Respondent either performed or directed workers to perform for compensation, the renovation described in paragraph 24 above.

27. On February 5, 2016, Respondent was a “renovator” as defined at 40 C.F.R. § 745.83.

Count 1

28. Complainant incorporates paragraphs 1 through 27 of this CAFO as if set forth in this paragraph.

29. 40 C.F.R. § 745.85(a)(2)(i)(D) requires that before conducting renovation activities in target housing, the renovation firm must cover the floor surface, including installed carpet, with plastic sheeting or other disposable impermeable material in the work area 6 feet beyond the

perimeter of surfaces undergoing renovation or a sufficient distance to contain dust, whichever is greater.

30. Respondent failed to cover the floor surface with plastic sheeting or other disposable impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain dust, whichever was greater, prior to conducting the February 5, 2016, renovation activity described in paragraph 24, above, at 1410 Poxson Avenue, Lansing, Michigan.

31. Respondent's failure to cover the floor surface with plastic sheeting or other disposal impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain dust, whichever was greater, prior to conducting the February 5, 2016, renovation activity described in paragraph 24, above, at 1410 Poxson Avenue, Lansing, Michigan, constitutes a violation of 40 C.F.R. § 745.85(a)(2)(i)(D), and TSCA Section 409, 15 U.S.C. § 2689.

Count 2

32. Complainant incorporates paragraphs 1 through 27 of this CAFO as if set forth in this paragraph.

33. 40 C.F.R. § 745.85(a)(5) requires that the renovation firm clean the work area until no dust, debris or residue remain after the renovation has been completed.

34. Respondent failed to clean the work area until no dust, debris or residue remain after conducting the renovation activity described in paragraph 24, above, on February 5, 2016, at 1410 Poxson Avenue, Lansing, Michigan.

35. Respondent's failure to clean the work area until no dust, debris or residue remain after conducting the renovation activity described in paragraph 24, above, on February 5, 2016, at 1410 Poxson Avenue, Lansing, Michigan, constitutes a violation of 40 C.F.R. § 745.85(a)(5), and TSCA Section 409, 15 U.S.C. § 2689.

Civil Penalty

36. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$9,450. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered EPA's *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, Revised April 5, 2013.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,450 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must state Respondent's name and the docket number of this CAFO.

38. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Mary McAuliffe (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not pay timely the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

42. Pursuant to 40 C.F.R. § 22.5(b)(2), the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and ekrieger@goayers.com (for Respondent).

43. Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

44. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, and other applicable federal, state, and local laws.

46. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

47. This CAFO constitutes a "prior such violation" as that term is used in EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent's "history of prior such violations" under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

48. The terms of this CAFO bind Respondent, and its successors and assigns.

49. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

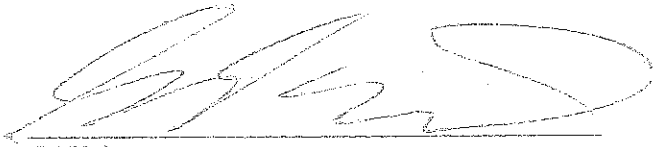
50. Each party agrees to bear its own costs and attorneys' fees in this action.

51. This CAFO constitutes the entire agreement between the parties.

52. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

Ayers Basement Systems, LLC, Respondent

6-19-19
Date



Ed Krieger
CEO
Ayers Basement Systems, LLC

United States Environmental Protection Agency, Complainant

7/25/2019
Date

Michael D. Harris
Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division

Consent Agreement and Final Order
In the Matter of: Ayers Basement Systems, LLC
Docket No. TSCA-05-2019-0010

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2/10/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: Ayers Basement Systems, LLC
Ed Krieger, CEO

Docket Number: TSCA-05-2019-0010

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on July 29, 2019, in the following manner to the addressees:

Copy by E-mail to
Respondent:

Ed Krieger, CEO
Ayers Basement Systems, LLC
2505 South Waverly Highway
Lansing, Michigan 48911
EKrieger@GoAyers.com

Copy by E-mail to
Attorney for Complainant:

Mary McAuliffe
mcauliffe.mary@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

July 29, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5