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** FILED **
03DEC2018 - 04:27PM
U.S.EPA - Region 09

10 UNITED STATES
11 ENVIRONMENTAL PROTECTION AGENCY
12 REGION 9

13 **In the Matter of:**

14 **ASC Berkeley, Inc., dba All Seasons
15 Construction**

16 **Respondent.**

Docket No. TSCA-09-2019- 0011

**CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18**

17 **CONSENT AGREEMENT**

18 The United States Environmental Protection Agency ("EPA"), Region 9, and ASC
19 Berkeley, Inc., dba All Seasons Construction ("Respondent") agree to settle this matter and
20 consent to the entry of this Consent Agreement and Final Order ("CAFO"), which
21 simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b)
22 and 22.18(b).

23 **I. AUTHORITY, JURISDICTION AND PARTIES**

24 1. This is a civil administrative penalty action brought against Respondent pursuant to
25 Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for violation
26 of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Sections 402 and 406 of
27

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1 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing rules issued at 40 C.F.R. Part 745,
2 Subpart E – Residential Property Renovation (“Subpart E”).

3 2. Complainant is the Chief, Waste and Chemical Section, Enforcement Division, EPA,
4 Region 9, who has been duly delegated the authority to bring and settle this action under TSCA.

5 3. Respondent, a California corporation located in Oakland, California, is a contractor
6 engaged in foundation, seismic retrofit, and other exterior work.

7
8 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

9 4. Subpart E applies to all renovations performed for compensation in target housing and
10 child-occupied facilities, unless the renovation qualifies for the exception involving a lead-free
11 determination identified at 40 C.F.R. § 745.82(a).

12 5. Pursuant to Section 402(c) of TSCA, 15 U.S.C. § 2682(c), Subpart E sets forth
13 requirements for certification of firms and individuals engaged in lead-based paint activities and
14 work practice standards for renovation, repair and painting activities in target housing.

15 6. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745, Subpart E
16 requires a person who performs for compensation a renovation of target housing to provide a
17 lead hazard information pamphlet to the owner and occupant no more than 60 days before
18 beginning the renovation. 40 C.F.R. § 745.84(a)(1).

19 7. No firm may perform, offer, or claim to perform renovations without certification from
20 EPA under §745.89 in target housing. 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

21 8. Firms performing renovations must ensure that a certified renovator is assigned to each
22 renovation performed by the firm and discharges all of the certified renovator responsibilities
23 identified in § 745.90.

1 9. Firms performing renovations must retain documentation of compliance with the
2 requirements of § 745.85, including documentation that a certified renovator was assigned to the
3 project; that the certified renovator provided on-the-job training for workers used on the project;
4 that the certified renovator performed or directed workers who performed all of the work practice
5 tasks described in § 745.85(a); and that the certified renovator performed the post-renovation
6 cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

8 10. "Target housing" means any housing constructed prior to 1978, except housing for the
9 elderly or persons with disabilities (unless any child who is less than six years of age resides or is
10 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15
11 U.S.C. § 2681.

13 11. "Renovation" means the modification of any existing structure, or portion thereof, that
14 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
15 defined by 40 C.F.R. § 745.223. The term "renovation" includes (but is not limited to): the
16 removal, modification or repair of painted surfaces or painted components (e.g., modification of
17 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
18 scraping, or other such activities that may generate paint dust)); the removal of building
19 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting
20 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
21 thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The
22 term "renovation" does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.

25 12. "Painted surface" means a component surface covered in whole or in part with paint or
26 other surface coatings. 40 C.F.R. § 745.83.

1 13. "Renovator" means any individual who either performs or directs workers who perform
2 renovations. A certified renovator is a renovator who has successfully completed a renovator
3 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.
4

5 14. "Person" means any natural or judicial person including any individual, corporation,
6 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any
7 interstate body; and any department, agency, or instrumentality of the Federal Government. 40
8 C.F.R. § 745.83.

9 15. "Firm" means a company, partnership, corporation, sole proprietorship, or individual
10 doing business, association, or other business entity; a Federal, State, Tribal, or local government
11 agency; or a nonprofit organization. 40 C.F.R. § 745.83.
12

13 16. "Pamphlet" means the EPA pamphlet titled, "Renovate Right: Important Lead Hazard
14 Information for Families, Child Care Providers and Schools," developed under Section 406(a) of
15 TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet
16 approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. 40
17 C.F.R. § 745.83.
18

19 17. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
20 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
21 Adjustment Act of 2015, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
22 \$38,892 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
23 after November 2, 2015 where penalties are assessed on or after January 15, 2018.
24

25 **III. ALLEGATIONS**

26 18. At all times relevant to this CAFO, Respondent was a "person," as that term is defined at
27

1 40 C.F.R. § 745.83.

2 19. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined at 40
3 C.F.R. § 745.83.

4 20. At all times relevant to this CAFO, the property at 384 42nd Street in Oakland, California
5 (“Target Housing”) was “target housing,” as that term is defined at Section 401 of TSCA, 15
6 U.S.C. § 2681.

7 21. On or about April 13, 2016, to May 9, 2016, Respondent performed at least one
8 “renovation,” as that term is defined at 40 C.F.R. § 745.83, at the Target Housing for
9 compensation. The renovation performed at the Target Housing on or about April 13, 2016, to
10 May 9, 2016, is referenced in this CAFO as “Renovation.”
11

12
13 CLAIM 1

14 22. Paragraphs 1-21 of this CAFO are realleged and are incorporated herein by reference.

15 23. Respondent performed the Renovation at the Target Housing without firm certification
16 pursuant to 40 C.F.R. § 745.89.

17 24. With respect to the Renovation, Respondent did not qualify for the exception involving a
18 lead-free determination identified in 40 C.F.R. § 745.82(a).

19 25. Respondent's performance of the Renovation at the Target Housing without firm
20 certification pursuant to 40 C.F.R. § 745.89 constitutes a violation of Section 409 of TSCA, 15
21 U.S.C. § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).
22

23
24 CLAIM 2

25 26. Paragraphs 1-25 of this CAFO are realleged and are incorporated herein by reference.

26 27. Respondent failed to provide the owner of the target housing with the EPA-approved lead
27

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1 hazard information pamphlet, as that term is defined at 40 C.F.R. § 745.83, no more than 60 days
2 before beginning the Renovation.

3 28. Respondent's failure to provide the owner of the target housing with the EPA-approved
4 lead hazard information pamphlet, as that term is defined at 40 C.F.R. § 745.83, no more than 60
5 days before beginning the Renovation constitutes a violation of Section 409 of TSCA, 15 U.S.C.
6 § 2689, and 40 C.F.R. § 745.84(a)(1).
7

8 CLAIM 3

9 29. Paragraphs 1-28 of this CAFO are realleged and are incorporated herein by reference.
10

11 30. Respondent did not ensure that certified renovator(s) discharged all of the certified
12 renovator responsibilities identified in § 745.90 for the Renovation performed at the Target
13 Housing.

14 31. Respondent's failure to ensure that certified renovator(s) discharged all of the certified
15 renovator responsibilities identified in § 745.90 for the Renovation performed at the Target
16 Housing constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
17 § 745.89(d)(2).
18

19 CLAIMS 4-7

20 32. Paragraphs 1-31 of this CAFO are realleged and are incorporated herein by reference.
21

22 33. With respect to the Renovation at the Target Housing, Respondent did not retain
23 documentation that certified renovator(s) were assigned to the project; that certified renovator(s)
24 provided on-the-job training for workers used; that certified renovator(s) performed or directed
25 workers who performed all of the work practice tasks described in § 745.85(a); and that certified
26 renovator(s) performed the post-renovation cleaning verifications described in § 745.85(b) for
27

1 the Renovation performed at the Target Housing.

2 34. Respondent's failures to retain documentation that certified renovator(s) were assigned to
3 the projects; that certified renovator(s) provided on-the-job training for workers used; that
4 certified renovator(s) performed or directed workers who performed all of the work practice
5 tasks described in § 745.85(a); and that certified renovator(s) performed the post-renovation
6 cleaning verification described in § 745.85(b) for the Renovation performed at the Target
7 Housing constitute four violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R.
8 § 745.86(b)(6).
9

10 **IV. RESPONDENT'S ADMISSIONS**

11 35. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
12 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
13 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III
14 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil
15 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the
16 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed
17 Final Order contained in this CAFO.
18

19 **V. CIVIL ADMINISTRATIVE PENALTY**

20 36. Respondent agrees to the assessment of a penalty in the amount of EIGHT THOUSAND
21 FIVE HUNDRED DOLLARS (\$8,500) as final settlement of the civil claims against Respondent
22 arising under TSCA as alleged in Section III of this CAFO.
23

24 37. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective
25 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to
26

27
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1 "Treasurer, United States of America," or paid by one of the other methods listed below and sent
2 as follows:

3 Regular Mail:

4 U.S. Environmental Protection Agency
5 Fines and Penalties
6 Cincinnati Finance Center
7 PO Box 979077
8 St. Louis, MO 63197-9000

9 Wire Transfers:

10 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the
11 following information:

12 Federal Reserve Bank of New York
13 ABA = 021030004
14 Account = 68010727
15 SWIFT address = FRNYUS33
16 33 Liberty Street
17 New York, NY 10045
18 Field Tag 4200 of the Fedwire message should read "D 68010727
19 Environmental Protection Agency"

20 Overnight Mail:

21 U.S. Bank
22 1005 Convention Plaza
23 Mail Station SL-MO-C2GL
24 ATTN Box 979077
25 St. Louis, MO 63101

26 ACH (also known as REX or remittance express):

27 US Treasury REX/Cashlink ACH Receiver ABA = 051036706
28 Account Number: 310006, Environmental Protection Agency
29 CTX Format Transaction Code 22 - checking
30 Physical location of US Treasury Facility
31 5700 Rivertech Court
32 Riverdale, MD 20737
33 Remittance Express (REX) 1-866-234-5681

34 On Line Payment:

35 This payment option can be accessed from the information below:

36 www.pay.gov

37 Enter "sfo1.1" in the search field

38 Open form and complete required fields

1 If clarification regarding a particular method of payment remittance is needed, contact the EPA
2 Cincinnati Finance Center at 513-487-2091.

3 Concurrently, a copy of the check or notification that the payment has been made by one of the
4 other methods listed above, including proof of the date payment was made, shall be sent with
5 a transmittal letter indicating Respondent's name, the case title, and the docket number to the
6 following addressees:

7
8 Regional Hearing Clerk
9 Office of Regional Counsel (ORC-1)
10 U.S. Environmental Protection Agency, Region 9
11 75 Hawthorne Street
12 San Francisco, California 94105

13 Max Weintraub
14 Waste & Chemical Section (ENF-2-2)
15 Enforcement Division
16 U.S. Environmental Protection Agency, Region 9
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 38. Payment of the above civil administrative penalty shall not be used by Respondent or any
20 other person as a tax deduction from Respondent's federal, state, or local taxes.

21 39. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
22 36 by the deadline specified in Paragraph 37, then Respondent shall pay to EPA a stipulated
23 penalty of \$100 per day in addition to the assessed penalty. Stipulated penalties shall accrue
24 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
25 become due and payable upon written request by EPA. In addition, failure to pay the civil
26 administrative penalty by the deadline specified in Paragraph 37 may lead to any or all of the
27 following actions:

28 a. The debt being referred to a credit reporting agency, a collection agency, or to the

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1 Department of Justice for filing of a collection action in the appropriate United States District
2 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
3 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

4
5 b. The debt being collected by administrative offset (i.e., the withholding of money payable
6 by the United States to, or held by the United States for, a person to satisfy the debt the person
7 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
8 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

9
10 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend
11 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors
12 or funds. 40 C.F.R. § 13.17.

13
14 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
15 penalties charges, and administrative costs will be assessed against the outstanding amount that
16 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
17 deadline specified in Paragraph 37. Interest will be assessed at an annual rate that is equal to the
18 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
19 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
20 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
21 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
22 Administrative costs for handling and collecting Respondent's overdue debt will be based on
23 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.
24 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the
25 Department of Justice, the Internal Revenue Service), that department or agency may
26
27

1 assess its own administrative costs, in addition to EPA's administrative costs, for handling and
2 collecting Respondent's overdue debt.

3 **VI. RESPONDENT'S CERTIFICATION**

4
5 40. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
6 federal regulations promulgated at Subpart E.

7 **VII. RETENTION OF RIGHTS**

8
9 41. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
10 for federal civil penalties for the violations and facts specifically alleged in Section III of this
11 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
12 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
13 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
14 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
15 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
16 address any violation of this CAFO or any violation not specifically alleged in Section III of this
17 CAFO.
18

19 42. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
20 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
21 permits.
22

23 **VIII. ATTORNEYS' FEES AND COSTS**

24 43. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
25 proceeding.
26

27 **IX. EFFECTIVE DATE**

28
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1 44. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
2 on the date that the final order contained in this CAFO, having been approved and issued by
3 either the Regional Judicial Officer or Regional Administrator, is filed.
4


5 **X. BINDING EFFECT**

6 45. The undersigned representative of Complainant and the undersigned representative of
7 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
8 of this CAFO and to bind the party he or she represents to this CAFO.

9 46. The provisions of this CAFO shall apply to and be binding upon Respondent and its
10 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
11 and assigns.
12


13
14 FOR RESPONDENT, ASC, BERKELEY, INC., DBA ALL SEASONS CONSTRUCTION:

15 10/25/18
16 DATE


17 Name MARIA L CORRALLO
18 Title PRESIDENT
ASC Berkeley, Inc., dba All Seasons Construction

19 FOR COMPLAINANT:

20 11/27/18
21 DATE


22 Douglas K. McDaniel
23 Chief, Waste & Chemical Section
24 Enforcement Division
25
26
27
28

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1 **FINAL ORDER**

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-⁰⁰¹¹) be


4 entered, and that Respondent shall pay a civil administrative penalty in the amount of EIGHT

5 THOUSAND FIVE HUNDRED DOLLARS (\$8,500) and comply with the terms and conditions

6 set forth in the Consent Agreement. This Consent Agreement and Final Order shall become

7 effective upon filing.

8
9
10 11/29/18
11 DATE

12 
13 STEVEN L. JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency,
16 Region 9

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *ASC Berkeley Inc.* (TSCA-09-2019-0011), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Mark L. Corrallo
ASC Berkeley Inc.
5277 College Avenue (Suite 10)
Oakland, CA 94618

HAND DELIVERED:

Complainant - Brian P. Riedel, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA 94105

Date: 2018-12-03


Steven Armsey
Regional Hearing Clerk
EPA, Region 9