



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007

SEP 28 2012

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 SEP 28 P 2:47
REGIONAL HEARING
CLERK

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel R. Brice, Esquire
Blitman & King, LLP
Franklin Center, Suite 300
443 North Franklin Street
Syracuse, New York 13204-5412

Re: In the Matter of **Upstate New York Laborers' Education and Training Fund**
Docket No. TSCA 02-2012-9266

Dear Mr. Brice:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) that resolves the above referenced matter. Please note that payment of the civil penalty assessed shall be made in accordance with the schedule on page 5 of the CA/FO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely yours,


Melva J. Hayden, Esquire
Assistant Regional Counsel
Office of Regional Counsel
Water and General Law Branch/Waste and Toxic Substance Branch

Enclosures

cc: Karen Maples, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
In the Matter of
**Upstate NY Laborers' Education
and Training Fund,**
Respondent.
Proceeding under Section 16(a) of
the Toxic Substances Control Act.
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
TSCA-02-2012-9266

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
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CLERK

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The Chief of the Pesticides and Toxic Substances Branch of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA") issued a "Show Cause Letter" (hereinafter "SCL") to Upstate New York Laborers' Education and Training Fund ("Respondent") on April 27, 2011. The SCL alleged that Respondent, as training provider during the years 2007 through 2009, failed in several instances to ensure compliance with both 40 C.F.R. Sections 745.225 (c)(13) and 745.225 (c)(14) by

conducting lead-based paint abatement training courses without providing EPA with prior notifications of courses offered and without providing EPA with notifications following completion of said courses. Based on these alleged failures, EPA contends Respondent's failures or refusals to ensure compliance with the regulations cited constitute violations of Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations promulgated pursuant to Section 402 of TSCA, 15 U.S.C. § 2682, set forth at 40 C.F.R. Part 745, Subpart L ("Requirements for Lead-Based Paint Activities," hereinafter "402 Abatement Rule"). Respondent does not admit these alleged violations.

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. Section 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation. (Title 40 C.F.R. §22.13(b) authorizes parties to resolve a matter through issuance of a CA/FO without the need to file a Complaint).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Upstate New York Laborers' Education and Training Fund.
2. Respondent's primary place of business is located at 8005 State Route 104, Oswego, New York 13126.
3. On or about August 5, 2009, duly designated representatives of EPA conducted an inspection of Respondent's lead-based paint abatement activities at its training facility, which is located at 8005 State Route 104, Oswego, New York 13126. This inspection is hereinafter referred to as "the Inspection."
4. As a result of the Inspection, EPA determined that Respondent, as a training

provider, providing courses to train workers to perform lead-based paint abatement, or renovation activities, had failed: (1) to provide to EPA prior notification of renovator, dust sampling technician, or lead-based paint activities courses offered, as required under 40 C.F.R. § 745.225(c)(13); and (2) to provide to EPA notification following completion of renovator, dust sampling technician, or lead-based paint activities courses, as required under 40 C.F.R. § 745.225(c)(14).

5. On or about April 27, 2011, EPA issued Respondent a SCL alleging violations by Respondent of 40 C.F.R. § 745.225(c)(13) and 40 C.F.R. § 745.225(c)(14) for eighteen (18) lead-based paint activities courses held between 2007 and 2009.

6. On or about June 15, 2011, EPA representatives held a conference call with Respondent's training director. In August, 2011, and April, 2012, the parties held additional informal settlement discussions, where Respondent did not admit the violations EPA has alleged against it, and Respondent made a claim of inability to pay the originally proposed penalty. Respondent documented its financial condition, and EPA evaluated the documentation. Respondent ultimately advised EPA that it had determined that the costs of defending the issues raised by EPA would be greater than the proposed settlement--\$7500, and thus, agreed to settle this matter with EPA by entering into this CA/FO. Respondent has informed EPA that it views the \$7500 payment as an administrative expense. But, Respondent has indicated that it understands that due to statutory and regulatory requirements, EPA must reference the \$7500 payment as a civil penalty even though this matter has not been formerly adjudicated.

7. Respondent has willingly and knowingly agreed to the suspension and modification of its prior EPA Accreditations to conduct lead-based paint worker training courses,

and supervisors' lead-based worker refresher training courses, under the provisions of 40 C.F.R. § 745.91, as follows:

- (a) As of the date of signature of the Final Order at the end of this document, Respondent agreed to voluntarily surrender its prior EPA Accreditations previously obtained from EPA under 40 C.F.R. §745.225:
 - 1. Lead abatement supervisor Initial (accreditation # NY-S-I-531-2, expiration 9/30/13) and
 - 2. Lead abatement supervisor Refresher (accreditation # NY-S-R-531-2, expiration 9/30/13);
- (b) Effective as of the date of signature of the Final Order at the end of this document, Respondent has agreed both that it will not conduct such training courses for one year after the date of signature of the Final Order at the end of this document, and that it will not seek, during the same one year period, to renew its EPA Accreditation to conduct either such course. In addition, Respondent has agreed to refer any workers in need of lead abatement training to another EPA-accredited training provider;
- (c) Respondent may reapply, if it so chooses, for accreditation to resume EPA training courses subsequent to the one-calendar year period; and
- (d) Respondent has agreed to waive any rights it may have to receive notification and to request a hearing, under the provisions of 40 C.F.R. Subsections 745.225(g) and/or (h), with respect to EPA's determinations set forth in this CA/FO.

TERMS OF 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. If Respondent reapplies for accreditation to resume EPA training courses subsequent to the one calendar year period referenced above, and such application is approved, Respondent shall hereinafter comply with all applicable provisions of Subchapter IV of TSCA and the regulations promulgated pursuant to it.

2. 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 nor denies the specific determinations contained in the "Findings of Fact and Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, 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, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. 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: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Name of Respondent - **Upstate New York Laborers' Education and Training Fund**
- 7) Docket Number – **TSCA-02-2012-9266**

Payment must be received at the above address (or account of EPA) on or before **90 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date"). Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

and

Melva J. Hayden, Esquire
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the 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. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and compliance with the agreement in paragraph 3), any and all claims, which exist as of the date of this Agreement, related to the alleged violations in this enforcement action, Docket No. TSCA-02-2012-9266, subject to the limitations of 40 C.F.R. Section 22.31(a). Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. 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.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or in any other judicial proceeding on the determinations contained in the "Findings of Fact and Conclusions of Law" section, above, or on the accompanying Final Order.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

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

11. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

Upstate New York Laborers' Education and Training Fund

RESPONDENT:

BY: John Shannon

NAME: JOHN SHANNON
(PLEASE PRINT)

TITLE: DIRECTOR

DATE: 9/19/12

COMPLAINANT:

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

DATE: SEPTEMBER 25, 2012

In the Matter of Upstate New York Laborers' Education and Training Fund
Docket Number TSCA-02-2012-9266

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 Upstate New York Laborers' Education and Training Fund, bearing Docket Number TSCA-02-2012-9266. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued as this Final Order, which shall become effective 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) and shall constitute an order issued under Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615.

DATE: September 28, 2012

Helen Ferrara

Helen Ferrara,
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of Upstate New York Laborers' Education and Training Fund
Docket Number TSCA-02-2012-9266

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:

The Office of the Regional Hearing Clerk
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested to:

Daniel R. Brice, Esquire
Blitman & King, LLP
Franklin Center, Suite 300
443 North Franklin Street
Syracuse, New York 13204-5412

Dated: Sept. 28, 2012
New York, New York


Secretary, ORC, Air Branch