



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105
Phone: (415) 972-3000
<http://www.epa.gov/region9>

CERTIFIED MAIL NO. 7015 3010 0000 3883 6496
RETURN RECEIPT REQUESTED

Mark Barbagelata
Seismic Retrofitters, Inc.
45 W Portal Avenue
San Francisco, CA 94127

FEB 27 2019

Re: **In the matter of Name of Seismic Retrofitters, Inc.**
Consent Agreement and Final Order
Docket No. TSCA-09-2019-0025

Dear Mr. Barbagelata:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with EPA Region 9. Your completion of all actions enumerated in the Consent Agreement and Final Order closes this case.

If you have any questions, please contact Rick Sakow at 415-947-4163.

Sincerely,

A handwritten signature in black ink, appearing to read "D. McDaniel".

Douglas K. McDaniel
Manager
Waste and Chemical Section
Enforcement Division

Enclosure

cc: Alex Volkov, Volkov Law Office (via email)

SYLVIA QUAST
Regional Counsel
United States Environmental Protection Agency, Region IX

DAVID H. KIM
Assistant Regional Counsel
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3882

Attorneys for Complainant

** FILED **
27FEB2019 - 04:42PM
U.S.EPA - Region 09

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

_____)	Docket No. TSCA-09-2019- <u>0025</u>
In the Matter of:)	
Seismic Retrofitters, Inc.)	CONSENT AGREEMENT
)	AND FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
Respondent)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA Region IX”) and Seismic Retrofitters, Inc. (“Respondent”) agree to settle this case initiated under the Toxic Substances Control Act (“TSCA” or the “Act”), 15 U.S.C. §§ 2601 *et seq.*, and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought against Respondent pursuant to Section 16(a) of 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 at 40 C.F.R. Part 22 for violations of Section 409 of TSCA, 15 U.S.C. § 2689, associated with Respondent's alleged failure to comply with Section 402 of TSCA, 15 U.S.C. § 2682, and its implementing regulations promulgated at 40 C.F.R. Part 745, Subpart E.
2. The Complainant is the Chief of the Waste and Chemical Section of the Air, Waste and Toxics Branch, Enforcement Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring this action under TSCA. In turn, the Regional Administrator of EPA Region IX further delegated the authority to bring this action under TSCA to the Chief of the Waste and Chemical Section of the Air, Waste and Toxics Branch, Enforcement Division.
3. Respondent is a California corporation whose principal offices are located at 45 West Portal Avenue, in San Francisco, California.

B. STATUTORY AND REGULATORY BASIS

4. Pursuant to Section 402(a) and (c) of TSCA, 15 U.S.C. § 2682(a) and (c), 40 C.F.R. Part 745, Subpart E provides requirements for certification of individuals and firms engaged in lead-based paint activities and work practice standards for renovation, repair, and painting activities in target housing and child occupied facilities.
5. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15 U.S.C. § 2681.
6. "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any

interstate body; and any department, agency, or instrumentality of the Federal Government. 40 C.F.R. § 745.83.

7. “Firm” means 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. 40 C.F.R. § 745.83.
8. “Renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is part of an abatement as defined by 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, ceilings, plumbing windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.
9. “Renovator” means an individual who either performs or directs workers who perform renovations. 40 C.F.R. § 745.83.
10. “Certified renovator” means a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.
11. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the assessment of a civil penalty not to exceed \$25,000 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This statutory maximum civil penalty has been raised to \$37,500 per day for each violation that occurred after January 12, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and its implementing

regulation, the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19.

C. ALLEGED VIOLATIONS

12. Respondent is a “person” as that term is defined at 40 C.F.R. § 745.83.
13. At all times relevant to this CAFO, Respondent was a “firm” as that term is defined at 40 C.F.R. § 745.83.
14. In or about 2014, Respondent performed “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at a residential property located at 64 Sanchez Street in San Francisco, California.
15. At all times relevant to the CAFO, the residential property located at 64 Sanchez Street in San Francisco, California was “target housing” as that term is defined at 40 C.F.R. § 745.83.
16. Firms performing renovations for compensation must obtain, from the property owner, a written acknowledgment that the owner has received the EPA lead hazard information pamphlet, or a certificate of mailing at least seven days prior to the renovation. 40 C.F.R. § 745.84(a)(1).
17. At all times relevant to this CAFO, Respondent failed to obtain, from the property owner a written acknowledgment that the owner had received the EPA lead hazard information pamphlets, or certificates of mailing at least seven days prior to the renovations for the renovation at 64 Sanchez Street in San Francisco, California.
18. Respondent’s failure to obtain from the property owner a written acknowledgment that the owner had received the EPA lead hazard information pamphlet, or a certificate of mailing at least seven days prior to the renovation for 64 Sanchez Street in San Francisco, California constitutes a single violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.
19. Firms performing renovations for compensation must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to

remain outside of the work area. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and post-renovation cleaning verification have been completed. 40 C.F.R. § 745.85(a)(1).

20. At all times relevant to this CAFO, Respondent failed to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area for the renovation at 64 Sanchez Street in San Francisco, California.
21. Respondent's failure to post appropriate signs for the renovation at 64 Sanchez Street in San Francisco, California constitutes a violation of 40 C.F.R. § 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.
22. Firms performing renovations for compensation must retain and make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of 3 years following completion of the renovation. 40 C.F.R. § 745.86(a).
23. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) shall include documentation that a certified renovator was assigned to the project.
24. At all times relevant to this CAFO, Respondent failed to keep documentation that a certified renovator was assigned to the renovation at 64 Sanchez Street in San Francisco, California.
25. Respondent's failure to keep documentation that a certified renovator was assigned to the renovation at 64 Sanchez Street in San Francisco, California constitutes a single violation of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.
26. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) shall include documentation that a certified renovator provided on-the-job training for workers used on a renovation.
27. At all times relevant to this CAFO, Respondent failed to keep documentation that a certified renovation provided on-the-job training for workers used on the renovation at 64 Sanchez Street in San Francisco, California.

28. Respondent's failure to keep documentation that a certified renovation provided on-the-job training for workers used on the renovation at 64 Sanchez Street in San Francisco, California constitutes a single violation of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.
29. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) shall include documentation that a certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a) for the renovation.
30. At all times relevant to this CAFO, Respondent failed to keep documentation that a certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a) for the renovation at 64 Sanchez Street in San Francisco, California.
31. Respondent's failure to keep documentation that a certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a) for the renovation at 64 Sanchez Street in San Francisco, California constitutes a single violation of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.
32. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) shall include documentation that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) for the renovation.
33. At all times relevant to this CAFO, Respondent failed to keep documentation that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) for the renovation at 64 Sanchez Street in San Francisco, California.
34. Respondent's failure to keep documentation that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) for the renovation at 64 Sanchez Street in San Francisco, California constitutes a single violation of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C. § 2689.
35. Firms performing renovations for compensation must obtain from EPA initial certification to perform renovations or dust sampling. 40 C.F.R. § 745.89(a).

36. At all times relevant to this CAFO, Respondent failed to receive initial certification from EPA to perform renovations or dust sampling.
37. Respondent's failure to receive its initial certification to perform renovations or dust sampling constitutes a violation of 40 C.F.R. § 745.89(c) and Section 409 of TSCA, 15 U.S.C. § 2689.
38. Firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90. 40 C.F.R. § 745.89(d)(2).
39. At all times relevant to this CAFO, Respondent failed to ensure that a certified renovator was assigned who discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 for the renovation performed at 64 Sanchez Street in San Francisco, California.
40. Respondent's failure to ensure that a certified renovator was assigned who discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 for the renovation performed at 64 Sanchez Street in San Francisco, California constitutes a single violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

D. RESPONDENT'S ADMISSIONS

41. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

42. In settlement of the civil claims alleged in Section I.C of the CAFO, Respondent hereby consents to the assessment of a civil penalty in the amount of TWENTY-SEVEN

THOUSAND AND FIFTY-FIVE DOLLARS (\$27,055). The civil penalty shall be paid within thirty (30) days of the effective date of this CAFO, according to the terms of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or paid by one of the other methods listed below and sent as follows:

Regular Mail:

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

Wire Transfers:

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

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

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo l.1" in the search field

Open form and complete required fields

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

The payment shall be accompanied by a transmittal letter identifying Respondent, the case name, and the case docket number. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Rick Sakow
Enforcement Division (ENF-2-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

43. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
44. If Respondent fails to pay the civil administrative penalty specified in Paragraph 42 of this CAFO within 30 days of entry of this CAFO, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA.

45. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:
- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
 - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
 - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
 - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in Paragraph 42 of this CAFO. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. §

13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RESPONDENT'S CERTIFICATION

45. In executing this CAFO, Respondent certifies that it is now in compliance with the federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

G. RETENTION OF RIGHTS

46. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the CAFO.
47. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

48. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

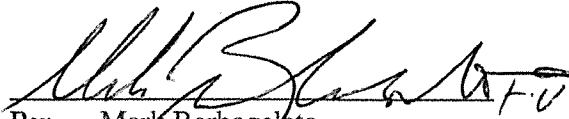
49. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

50. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
51. This CAFO constitutes the entire agreement between the parties resolving this matter arising under TSCA.
52. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

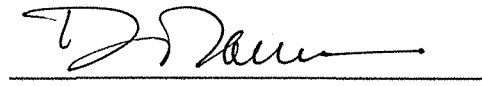
FOR RESPONDENT SEISMIC RETROFITTERS, INC.:

12/28/2018
DATE


By: Mark Barbagelata
Title: President
Address: 45 West Portal Avenue
San Francisco, CA 94127

FOR COMPLAINANT EPA REGION IX:

2/7/19
DATE

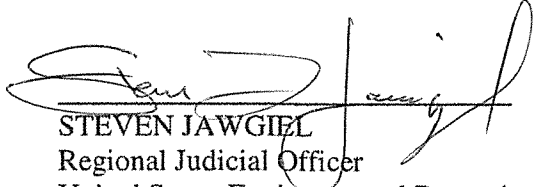

Douglas K. McDaniel

Chief
Waste and Chemical Section
Enforcement Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

II. FINAL ORDER

EPA Region IX and Respondent having entered into the foregoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-0025) be entered,
and that Respondent shall pay a civil administrative penalty in the amount of TWENTY-SEVEN
THOUSAND AND FIFTY-FIVE DOLLARS (\$27,055), and otherwise comply with the terms and
conditions set forth in the Consent Agreement. This CAFO shall become effective upon filing.

02/27/19
DATE


STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental Protection
Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order in the matter of Seismic Retrofitters, Inc. [Docket Number: TSCA-09-2019-0025] has been filed by the Regional Hearing Clerk, and was served on the following parties as indicated below:

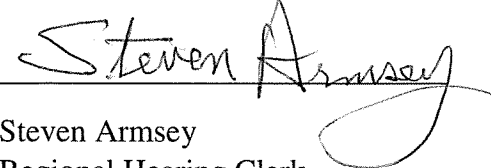
Certified Mail: 7015 3010 0000 3883 6496

Respondent(s): Mr. Mark Barbagelata
Seismic Retrofitters, Inc.
45 West Portal Avenue
San Francisco, CA 94127

Mail Box

Complainant: David Kim
Assistant Regional Counsel
U.S. EPA Region IX (ORC-2)
75 Hawthorne Street
San Francisco, CA 94105

Dated at San Francisco, California, this 27th of February, 2019



Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street, 12th Floor (ORC)
San Francisco, CA 94105