

****FILED****
15 JULY 2021
U.S. EPA - REGION IX

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10 UNITED STATES
11 ENVIRONMENTAL PROTECTION AGENCY
12 REGION 9

13 **In the Matter of:**

14 **Biayna Corp.,**

15 **Respondent.**

Docket No. TSCA-09-2021-0050

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

16 **CONSENT AGREEMENT**

17 The United States Environmental Protection Agency (“EPA”), Region 9, and Biayna
18 Corp. (“Respondent”) agree to settle this matter and consent to the entry of this Consent
19 Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this
20 matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

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

22 1. This is a civil administrative penalty action brought against Respondent pursuant to
23 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
24 of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Sections 402 and 406 of
25 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing rules issued at 40 C.F.R. Part 745,
26 Subpart E – Residential Property Renovation (“Subpart E”).
27

28 In the Matter of: Biayna Corp.
Consent Agreement and Final Order 1

1 2. Complainant is the Manager, Toxics Section, Enforcement and Compliance Assurance
2 Division, EPA, Region 9, who has been duly delegated the authority to bring and settle this
3 action under TSCA.

4 3. Respondent, a California corporation located in Los Angeles, California, is an
5 engineering and construction firm.

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

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

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

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

16 7. No more than 60 days before beginning renovation activities in any residential dwelling
17 unit of target housing, the firm performing the renovation must provide the owner of the
18 unit with the “pamphlet,” as that term is defined at 40 C.F.R. § 745.83, and either obtain from the
19 owner a written acknowledgment that the owner has received the “pamphlet” or obtain a
20 certificate of mailing the “pamphlet” at least 7 days prior to the renovation. 40 C.F.R.
21 § 745.84(a)(1).

22 8. Firms performing renovations must ensure that a certified renovator is assigned to each
23 renovation performed by the firm and discharges all of the certified renovator responsibilities
24

1 identified in § 745.90. 40 C.F.R. § 745.89(d)(2).

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

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

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

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

2 13. “Renovator” means any individual who either performs or directs workers who perform
3 renovations. A certified renovator is a renovator who has successfully completed a renovator
4 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.
5

6 14. “Person” means any natural or judicial person including any individual, corporation,
7 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any
8 interstate body; and any department, agency, or instrumentality of the Federal Government. 40
9 C.F.R. § 745.83.
10

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

14 16. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead Hazard
15 Information for Families, Child Care Providers and Schools,” developed under Section 406(a) of
16 TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet
17 approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. 40
18 C.F.R. § 745.83.
19

20 17. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
21 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
22 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
23 \$41,056 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
24 after November 2, 2015 where penalties are assessed on or after December 23, 2020.
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1 **III. ALLEGATIONS**

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

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

6 20. At all times relevant to this CAFO, the following 10 properties were “target housing,” as
7 that term is defined at Section 401 of TSCA, 15 U.S.C. § 2681: 1) 3637 Keystone Avenue, Los
8 Angeles, CA 90034; 2) 7617 De Longpre Avenue, Los Angeles, CA 90046; 3) 1216 N. Las
9 Palmas Avenue, Los Angeles, CA 90038; 4) 415 Loma Drive, Los Angeles, CA 90017; 5) 1624
10 N. Laurel Canyon Boulevard, Los Angeles, CA 90046; 6) 155 Entrada Drive, Los Angeles, CA
11 90402; 7) 11706 Kiowa Avenue, Los Angeles, CA 90049; 8) 1218 South Barrington Avenue,
12 Los Angeles, CA 90025; 9) 3265 South Cattaraugus Avenue, Los Angeles, CA 90034; and 10)
13 6738 Independence Avenue, Canoga Park, CA 91303.

14 21. During the period of approximately July 2017 to February 2019, Respondent performed
15 at least one “renovation,” as that term is defined at 40 C.F.R. § 745.83, at each the following 10
16 properties: 1) 3637 Keystone Avenue, Los Angeles, CA 90034; 2) 7617 De Longpre Avenue,
17 Los Angeles, CA 90046; 3) 1216 N. Las Palmas Avenue, Los Angeles, CA 90038; 4) 415 Loma
18 Drive, Los Angeles, CA 90017; 5) 1624 N. Laurel Canyon Boulevard, Los Angeles, CA 90046;
19 6) 155 Entrada Drive, Los Angeles, CA 90402; 7) 11706 Kiowa Avenue, Los Angeles, CA
20 90049; 8) 1218 South Barrington Avenue, Los Angeles, CA 90025; 9) 3265 South Cattaraugus
21 Avenue, Los Angeles, CA 90034; and 10) 6738 Independence Avenue, Canoga Park, CA 91303
22 (“Renovated Properties”).
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1 22. With respect to the Renovated Properties, Respondent did not qualify for the exception
2 involving a lead-free determination identified in 40 C.F.R. § 745.82(a).

3 CLAIM 1

4 23. Paragraphs 1-22 of this CAFO are realleged and are incorporated herein by reference.

5
6 24. Respondent performed renovations at the Renovated Properties without firm certification
7 pursuant to 40 C.F.R. § 745.89.

8 25. Respondent's performance of renovations at the Renovated Properties without firm
9 certification pursuant to 40 C.F.R. § 745.89 constitutes a violation of Section 409 of TSCA, 15
10 U.S.C. § 2689, and 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

11 CLAIMS 2-11

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

13 27. Respondent did not obtain from each owner of each of the Renovated Properties a written
14 acknowledgment that the owner received the “pamphlet,” as that term is defined at 40 C.F.R.
15 § 745.83, or obtained a certificate of mailing the “pamphlet” at least 7 days prior to each
16
17
18 respective renovation at each of the respective Renovated Properties.

19 28. Respondent's failures to obtain from each owner of each of the Renovated Properties a
20 written acknowledgment that the owner received the “pamphlet,” as that term is defined at 40
21 C.F.R. § 745.83, or obtain a certificate of mailing the “pamphlet” at least 7 days prior to each
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23
24 respective renovation at each of the respective Renovated Properties constitute 10 violations of
25 Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.84(a)(1).

26 CLAIMS 12-21

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

1 30. Respondent did not ensure that a certified renovator was assigned to each renovation and
2 discharged all of the certified renovator responsibilities identified in § 745.90 at the Renovated
3 Properties.

4 31. Respondent's failures to ensure that a certified renovator was assigned to each renovation
5 and discharged all of the certified renovator responsibilities identified in § 745.90 at the
6 Renovated Properties constitute 10 violations of Section 409 of TSCA, 15 U.S.C. § 2689, and 40
7 C.F.R. § 745.89(d)(2).
8

9 CLAIMS 22-31

10 32. Paragraphs 1-31 of this CAFO are realleged and are incorporated herein by reference.
11

12 33. With respect to each renovation at each of the Renovated Properties, Respondent did not
13 retain documentation that certified renovator(s) were assigned to the project; that certified
14 renovator(s) provided on-the-job training for workers used; that certified renovator(s) performed
15 or directed workers who performed all of the work practice tasks described in § 745.85(a); and
16 that certified renovator(s) performed the post-renovation cleaning verifications described in
17 § 745.85(b).
18

19 34. With respect to each renovation at each of the Renovated Properties, Respondent's
20 failures to retain documentation that certified renovator(s) were assigned to the projects; that
21 certified renovator(s) provided on-the-job training for workers used; that certified renovator(s)
22 performed or directed workers who performed all of the work practice tasks described in
23 § 745.85(a); and that certified renovator(s) performed the post-renovation cleaning verification
24 described in § 745.85(b) constitute 10 violations of Section 409 of TSCA, 15 U.S.C. § 2689, and
25 40 C.F.R. § 745.86(a).
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1 **IV. RESPONDENT'S ADMISSIONS**

2 35. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
3 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
4 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III
5 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil
6 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the
7 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed
8 Final Order contained in this CAFO.
9

10 **V. CIVIL ADMINISTRATIVE PENALTY**

11 36. Respondent agrees to the assessment of a penalty in the amount of SEVEN THOUSAND
12 TWO HUNDRED FIFTY-TWO DOLLARS (\$7,252), inclusive of interest, as final settlement of
13 the civil claims against Respondent arising under TSCA as alleged in Section III of this CAFO.
14

15 37. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective
16 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to
17 "Treasurer, United States of America," or paid by one of the other methods listed below and sent
18 as follows:
19

20 Regular Mail:
21 U.S. Environmental Protection Agency
22 Fines and Penalties
23 Cincinnati Finance Center
24 PO Box 979077
25 St. Louis, MO 63197-9000

26 Wire Transfers:
27 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the
28 following information:
Federal Reserve Bank of New York
ABA = 021030004

1 Account = 68010727
2 SWIFT address = FRNYUS33
3 33 Liberty Street
4 New York, NY 10045
5 Field Tag 4200 of the Fedwire message should read “D 68010727
6 Environmental Protection Agency”

7 Overnight Mail:
8 U.S. Bank
9 1005 Convention Plaza
10 Mail Station SL-MO-C2GL
11 ATTN Box 979077
12 St. Louis, MO 63101

13 ACH (also known as REX or remittance express):
14 US Treasury REX/Cashlink ACH Receiver ABA = 051036706
15 Account Number: 310006, Environmental Protection Agency
16 CTX Format Transaction Code 22 - checking
17 Physical location of US Treasury Facility
18 5700 Rivertech Court
19 Riverdale, MD 20737
20 Remittance Express (REX) 1-866-234-5681

21 On Line Payment:
22 This payment option can be accessed from the information below:
23 www.pay.gov
24 Enter “sfo1.1” in the search field
25 Open form and complete required fields
26 If clarification regarding a particular method of payment remittance is needed, contact the EPA
27 Cincinnati Finance Center at 513-487-2091.

28 Concurrently, 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, shall be sent with
a transmittal letter indicating Respondent’s name, the case title, and the docket number to the
following addressees:

Regional Hearing Clerk:
R9HearingClerk@epa.gov

Rick Sakow:
Sakow.Rick@epa.gov

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

3 39. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
4 36 by the deadline specified in Paragraph 37, then Respondent shall pay to EPA a stipulated
5 penalty of \$100 per day in addition to the assessed penalty. Stipulated penalties shall accrue
6 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall
7 become due and payable upon written request by EPA. In addition, failure to pay the civil
8 administrative penalty by the deadline specified in Paragraph 37 may lead to any or all of the
9 following actions:
10

11 a. The debt being referred to a credit reporting agency, a collection agency, or to the
12 Department of Justice for filing of a collection action in the appropriate United States District
13 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
14 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
15

16 b. The debt being collected by administrative offset (i.e., the withholding of money payable
17 by the United States to, or held by the United States for, a person to satisfy the debt the person
18 owes the Government), which includes, but is not limited to, referral to the Internal Revenue
19 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
20

21 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend
22 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors
23 or funds. 40 C.F.R. § 13.17.
24

25 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,
26 penalties charges, and administrative costs will be assessed against the outstanding amount that
27

1 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the
2 deadline specified in Paragraph 37. Interest will be assessed at an annual rate that is equal to the
3 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan
4 account rate) as prescribed and published by the Secretary of the Treasury in the Federal
5 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
6 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
7 Administrative costs for handling and collecting Respondent's overdue debt will be based on
8 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.
9 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the
10 Department of Justice, the Internal Revenue Service), that department or agency may
11 assess its own administrative costs, in addition to EPA's administrative costs, for handling and
12 collecting Respondent's overdue debt.
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15 **VI. RESPONDENT'S CERTIFICATION**

16 40. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
17 federal regulations promulgated at Subpart E.
18

19 **VII. RETENTION OF RIGHTS**

20 41. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
21 for federal civil penalties for the violations and facts specifically alleged in Section III of this
22 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
23 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
24 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
25 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
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1 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
2 address any violation of this CAFO or any violation not specifically alleged in Section III of this
3 CAFO.

4 42. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
5 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
6 permits.
7

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

9 43. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
10 proceeding.
11

12 **IX. EFFECTIVE DATE**

13 44. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
14 on the date that the final order contained in this CAFO, having been approved and issued by
15 either the Regional Judicial Officer or Regional Administrator, is filed.
16

17 **X. BINDING EFFECT**

18 45. The undersigned representative of Complainant and the undersigned representative of
19 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
20 of this CAFO and to bind the party he or she represents to this CAFO.
21

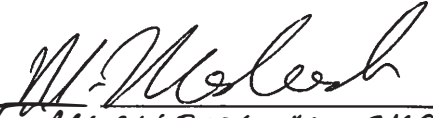
22 46. The provisions of this CAFO shall apply to and be binding upon Respondent and its
23 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
24 and assigns.
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FOR RESPONDENT, BIAYNA CORP.

06-01-21

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Name: MUSHEGH MURADYAN
Title: Vice President
Biayna Corp.

FOR OMPPLAINANT:

6/16/2021

TE

MATTHEW SALAZAR

Digitally signed by
MATTHEW SALAZAR
Date: 2021.06.16
12:23:20 -07'00'
Matt Salazar
Manager, Toxics Section, Enforcement
and Compliance Assurance Division

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-09-2021-0050) be entered,
4 and that Respondent shall pay a civil administrative penalty in the amount of SEVEN
5 THOUSAND TWO HUNDRED FIFTY-TWO DOLLARS (\$7,252) and comply with the terms
6 and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order
7 shall become effective upon filing.
8

9
10 **STEVEN JAWGIEL** Digitally signed by STEVEN
JAWGIEL
Date: 2021.07.15 08:00:15 -07'00'

11 _____
DATE

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

This is to certify the attached Consent Agreement and Final Order in the matter of Biayna Corp., Docket Number: TSCA-09-2021-0050 has been filed by the Regional Hearing Clerk, and was served on the following parties, via electronic mail, as indicated below:

Respondent: Mushegh Muradyan
Vice President
Biayna Corp.
9751 Wheatland Ave.
Sunland, CA 91040
mushegh@biayna.com

Nathan A. Cohen, Esq.
Peckar & Abramson
801 S. Figueroa Street, Suite 950
Los Angeles, CA 90017
NCohen@pecklaw.com

Complainant: Brian Riedel
Assistant Regional Counsel
U.S. EPA Region IX
Riedel.brian@epa.gov

Rick Sakow
Enforcement and Compliance Assurance Division
U.S. EPA Region IX
Sakow.rick@epa.gov

Armsey ,
Steven

Digitally signed by
Armsey, Steven
Date: 2021.07.15
20:17:16 -07'00'

Steven Armsey
Regional Hearing Clerk
Office of Regional Counsel, Region IX