

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N. 5th STREET

KANSAS CITY, KANSAS 66101

10 SEP 29 PM 4:09

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of

ROBERT KAHNEN

Omaha, NE

Respondent

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Docket No. TSCA-07-2010-0025

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Robert Kahnen (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is an individual, Robert Kahnen of 2469 South 16th Street, Omaha, Nebraska 68108.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Factual Background

6. Respondent is, and at all times referred to herein was, a “person” within the meaning of TSCA.

7. Respondent is the “lessor” or “agent” as that term is defined by 40 C.F.R. § 745.103, of residential property located at 1303 Park Avenue #2, Omaha, Nebraska 68105.

8. The above described property was constructed before 1978 and is “target housing” as that term is defined by 40 C.F.R. § 745.103.

Alleged Violations

9. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

10. The facts stated in Paragraphs 1 through 8 above are herein incorporated.

11. Information collected shows that Respondent entered into a contract to lease the property located at 1303 Park Avenue #2, Omaha, Nebraska on or about June 29, 2008.

12. Information collected shows that Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

13. Respondent’s failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. § 745.107(a)(1) and, in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

14. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Consent Agreement and Final Order.

15. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

16. Respondent neither admits nor denies the factual allegations set forth above.

17. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

18. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

19. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

20. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits at target housing in Omaha, Nebraska which is owned by Respondent. Respondent shall by and through a certified lead abatement contractor, at the cost of not less than Five Thousand Seven Hundred Seventy-Five Dollars (\$5,775), perform encapsulation of lead-based paint by way of installing siding at specific target housing in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

21. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter he has sent to the Nebraska Department of Health and Human Services, Environmental Health Unit Office of Environmental Health Hazards and Indoor Air Asbestos/Lead-Based Paint Program, 301 Centennial Mall South, P.O. Box 95026, Lincoln, Nebraska 68509-5026 informing the State of its intent to perform a lead-based paint abatement SEP and requesting procedural information pertaining to performance of the SEP. A copy of this letter shall also be sent to the Douglas County, Nebraska Health Department, Childhood Lead Poisoning Prevention Program, 1819 Farnam St, Room 400, Omaha, Nebraska 68183.

22. The total expenditure for the SEP shall not be less than Five Thousand Seven Hundred Seventy Five Dollars (\$5,775), and the SEP shall be completed no later than 90 days of the effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with Federal, State, and local laws and regulations.

23. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the State agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented.
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks.
- (iii) The following certification signed by Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

(v) The report shall be directed to the following:

As to EPA:
Stephven Richard, WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

As to the State:
Doug Gillespie, Program Director
Nebraska Health and Human Services
P.O. Box 95026
301 Centennial Mall
Lincoln, NE 68509-5026

24. If the SEP referenced in Paragraph 20 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondent shall pay a stipulated penalty in the amount of Six Thousand Nine Hundred Thirty Dollars (\$6,930) minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

- (i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.
- (ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within ninety (90) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying the EPA Region 7 contact identified in Paragraph 23 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

25. Respondent certifies that it is not required to perform or develop the SEP by any Federal, State, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or to comply with State or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, any credit in any other enforcement action for the SEP.

26. Any public statement, oral or written, in print, film, or other media made by Respondent making reference to the SEP shall including the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

27. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of One Thousand Nine Hundred Twenty-Five Dollars (\$1,925) to be paid within thirty (30) days of the effective date of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this document.

28. The effect of settlement described in Paragraph 27 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 19 of this Consent Agreement and Final Order.

29. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 27 above, may result in the commencement of a civil action in Federal District

Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

30. No portion of the civil penalty or interest paid or monies expended on the SEP by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

31. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of One Thousand Nine Hundred Twenty-Five Dollars (\$1,925) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by Certified or Cashier's Check made payable to the "United States Treasury" and sent to:

EPA-Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Raymond Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. The effective date of this Consent Agreement and Final Order shall be the date on which it is filed with the Regional Hearing Clerk.

IN THE MATTER of Robert Kahnen
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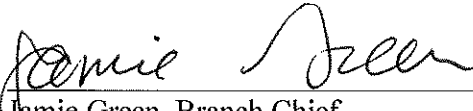
**RESPONDENT
ROBERT KAHNEN**

Date: 9-29-10

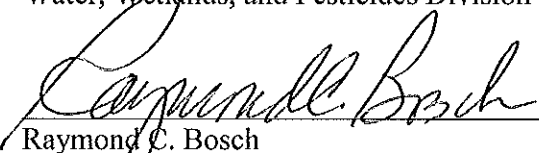
By: Robert F. Kahnen
ROBERT F. KAHNEN OWNER
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/29/10

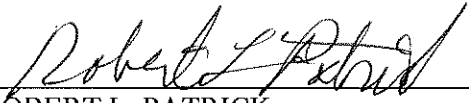
By: 
Jamie Green, Branch Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: _____

By: 
Raymond C. Bosch
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Sept. 29, 2010



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region



Elite Exteriors
201 Onk Creek Dr.
Lincoln, NE 68528
(402) 466-1001
(800) 725-9532
www.eliteexteriorsonline.com
rich@elite.omhcoxml.com

Elite Exteriors
14535 Industrial Road
Omaha, NE 68144
(402) 330-2863
(888) 949-1848



Name Bob Kahnen
Address 2911 Poppleton
City Omaha
State / Zip NE
Home Phone 345-9812
Work Phone _____
Cell Phone 206-7670
Email _____

Estimates Only

- | | INCLUDED | NOT INCLUDED | |
|----------------------|---|-------------------------------------|---|
| PREPARATION | 1. <input type="checkbox"/> | <input checked="" type="checkbox"/> | Remove existing siding Type: _____ |
| | 2. <input type="checkbox"/> | <input checked="" type="checkbox"/> | Plr out walls on brick, block, metal or stucco areas: Location: _____ |
| | 3. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Install Premium non-corrosive starter strip. |
| INSULATION | 4. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Install insulation on flat wall areas to be sided with $\frac{1}{2}$ " (Circle One) Type <u>InsulFoam</u> |
| CUSTOM TRIM | 5. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Apply Premium soffit system. Color: <u>Frost</u> <u>Vinyl</u> Aluminum (Circle One) |
| | 6. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Custom wrap window/door brickmold in clad aluminum trim materials. Color: <u>white</u>
Smooth or PVC - Flat or Picture (Circle One) # of wraps: <u>2</u> |
| | 7. <input type="checkbox"/> | <input checked="" type="checkbox"/> | Custom wrap garage door brickmold. (Circle One) Single, Double Single, or Double
Smooth or PVC (Circle One) Color: _____ |
| | 8. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Custom wrap fascia boards <u>Smooth</u> or PVC (Circle One) Color: <u>White</u> |
| | 9. <input type="checkbox"/> | <input checked="" type="checkbox"/> | Custom wrap Breeza boards. Smooth or PVC (Circle One) Color: _____ |
| | 10. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Install Premium corner posts to all outside corners. Color: <u>Frost</u> |
| | 11. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Install Forma clip locking system to top panel. |
| SIDING | 12. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Install Premium Vinyl <u>1/2"</u> in wall system to flat wall areas to be covered.
Color: <u>Frost</u> Style: <u>DC</u> Horizontal Vertical (Circle One) |
| PORCH SYSTEMS | 13. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Cover porch ceiling with Premium <u>Vinyl</u> Aluminum (Circle One) panel. Color: <u>Frost</u> |
| | 14. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form fir porch beams in soffit. <u>Vinyl</u> Aluminum (Circle One) material and install trim material. Color: <u>White</u> |
| | 15. <input type="checkbox"/> | <input checked="" type="checkbox"/> | Wrap knee braces in clad aluminum trim materials. Smooth or PVC (Circle One)
Color: _____ |
| | 16. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Wrap porch posts in clad aluminum trim materials. Smooth or PVC (Circle One)
Color: <u>White</u> |
| ACCESSORIES | 17. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Install dryer vent/fixture mounting blocks/box-outs/gables as needed. Color: <u>Frost</u> |
| | 18. <input type="checkbox"/> | <input checked="" type="checkbox"/> | Install Shutters, Raised Panel or Louvered (Circle One) Color: _____ Qty: _____ |
| CLEANUP | 19. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Clean up of job |
| WARRANTIES | 20. <input checked="" type="checkbox"/> | <input type="checkbox"/> | Manufacturer's warranty sent upon completion and payment in full. |

Other Work (Specify) repair about 12 sq ft of rotten siding

metall house wrap to contain lead

Cap top of porch railing in white

Elite Exteriors is a licensed abatement contractor

Price to change because EPA's restriction jobs has to be an abatement

Price \$ 15662

Agent [Signature]
Owner [Signature]
Date 8/11/10

IN THE MATTER OF Robert Kahnen, Respondent
Docket No. TSCA-07-2010-0025

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:

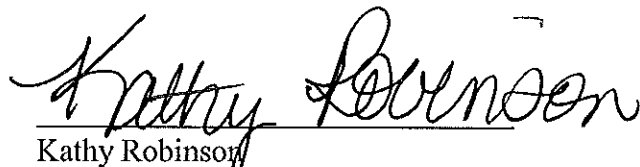
Copy hand delivered to
Attorney for Complainant:

Raymond C. Bosch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert Kahnen
Kahnen Company
2469 South 16th Street
Omaha, Nebraska 68108

Dated: 9/30/10


Kathy Robinson
Hearing Clerk, Region 7