



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8 2017 APR 25 PM 1:49
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK


DOCKET NO.: TSCA-08-2017-0005

IN THE MATTER OF:)	
)	
KGN ASSET MANAGEMENT, LLC)	FINAL ORDER
KGN ASSET MANAGEMENT, INC.)	
RESTORATION REALTY, INC.)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 25th DAY OF April, 2017.



Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Docket No. TSCA-08-2017-0005

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IN THE MATTER OF:)
)
)
KGN Asset Management LLC)
KGN Asset Management, Inc.)
Restoration Realty, Inc.)
423 S Gilpin Street)
Denver, Colorado 80209)
)
Respondents.)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Complainant, the United States Environmental Protection Agency, Region 8 (the EPA), and Respondents, KGN Asset Management, LLC; KGN Asset Management, Inc.; and Restoration Realty, Inc. (collectively, Respondents), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Combined Complaint and Consent Agreement (CCCA) is entered into by the EPA, by its duly delegated officials, and by Respondents for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 16 and 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2615, 2689, and the regulations promulgated under TSCA Subchapter IV, as set forth at 40 C.F.R. Part 745.

II. STATUTORY AND REGULATORY BACKGROUND

3. As directed by section 402(c) of TSCA, 15 U.S.C. § 2682(c), the EPA promulgated the Renovation, Repair, and Painting (RRP) Rule, codified at 40 C.F.R. part 745, subpart E, with the purpose of protecting the public from lead-based paint hazards associated with renovation, repair, and painting activities.
4. The RRP Rule requires that individuals performing renovations for compensation in target housing are properly trained, renovators and firms that perform renovations are certified, and the work practice standards at 40 C.F.R. § 745.85 are followed during renovations.
5. "Target housing" means any housing constructed prior to 1978, except for 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 zero-bedroom dwelling. 15 U.S.C. § 2681(17).

6. “Renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined at 40 C.F.R. § 745.223. 40 C.F.R. § 745.83.
7. Failure to comply with any provision of the RRP Rule, 40 C.F.R. part 745, subpart E, constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689. Section 16 of TSCA, 15 U.S.C. § 2615, as modified by 40 C.F.R. Part 19, authorizes the EPA to assess a civil penalty of up to \$37,500 for each violation of section 409.

III. RESPONDENT

8. Respondents are companies that are registered to do business in the State of Colorado.
9. Respondents are “persons” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689, and as defined at 40 C.F.R. § 745.83.
10. Respondents are “firms” as defined by 40 C.F.R. § 745.83.

IV. STATEMENTS OF FACT AND CONCLUSIONS OF LAW

11. During the period of March 2014 through May 2016, Respondents engaged in work on the following residential properties:
 - 418 S. Gilpin Street, Denver, Colorado (Gilpin Jobsite)
 - 758 S. Logan Street, Denver, Colorado (Logan Jobsite)
 - 260 S. Franklin Street, Denver, Colorado (Franklin Jobsite)
 - 781 S. Sherman Street, Denver, Colorado (781 Sherman Jobsite)
 - 787 S. Sherman Street, Denver, Colorado (787 Sherman Jobsite)
 - 1594 Monroe Street, Denver, Colorado (Monroe Jobsite)
 - 2505 Elm Street, Denver, Colorado (Elm Jobsite)
12. All jobsites are residential properties constructed prior to 1978 and are “target housing” as the term is defined in 15 U.S.C. § 2681(17).
13. Respondents performed a “renovation” as the term is defined in 40 C.F.R. § 745.83, at all jobsites.
14. On April 10, 2014, an authorized representative of the EPA conducted a compliance inspection at the Gilpin Jobsite to determine compliance with the RRP Rule.
15. On September 28, 2015, an authorized representative of the EPA conducted a compliance inspection at the Elm Jobsite to determine compliance with the RRP Rule.
16. Respondents’ renovation at each jobsite was recorded and parts of each renovation were broadcast on the television program “*Raise the Roof*.” Respondents produced to EPA documents and written information about Respondents’ renovations at each jobsite.
17. The information gathered during the EPA’s two compliance inspections, material provided by

Respondents, and the publicly available video recordings demonstrate that Respondents violated the RRP Rule and section 409 of TSCA, 15 U.S.C. § 2689 as a result of Respondents' renovation activities at each of the jobsites described in this agreement.

Count 1

18. The "initial certification" requirement at 40 C.F.R. § 745.89(a) provides that firms performing renovations on target housing are required to apply to the EPA for certification.
19. Respondents failed to obtain initial certification from the EPA prior to performing renovations on target housing, as required by 40 C.F.R. § 745.89(a).
20. Respondents' failure to obtain initial certification constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and section 409 of TSCA, 15 U.S.C. § 2689.

Counts 2 through 8

21. Firms performing renovations on target housing are required to retain and make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation, pursuant to 40 C.F.R. § 745.86(a).
22. 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.
23. At all jobsites referenced herein, Respondents failed to retain documentation that a certified renovator provided on-the-job training for workers used on the renovation, in violation of 40 C.F.R. § 745.86(a).
24. Respondents' failure to retain documentation that a certified renovator provided on-the-job training for workers used on all jobsites listed in paragraph 11 constitutes seven violations of section 409 of TSCA, 15 U.S.C. § 2689.

Counts 9 through 15

25. Firms performing renovations on target housing are required to retain and make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation, pursuant to 40 C.F.R. § 745.86(a).
26. 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.
27. At all jobsites referenced herein, Respondents failed to retain 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, in violation of 40 C.F.R. § 745.86(a).
28. Respondents' failure to retain 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 all jobsites listed in paragraph 11 constitutes seven violations of section 409 of TSCA, 15 U.S.C. § 2689.

Counts 16 through 21

29. Firms performing renovations on target housing are required to retain and make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation, pursuant to 40 C.F.R. § 745.86(a).
30. 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.
31. At all jobsites referenced herein with the exception of the Elm Jobsite, Respondents failed to retain documentation that a certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b) for the renovation, in violation of 40 C.F.R. § 745.86(a)
32. Respondents' failure to retain documentation that a certified renovator performed the post-renovation cleaning verification for the Gilpin Jobsite, Logan Jobsite, Franklin Jobsite, 781 Sherman Jobsite, 787 Sherman Jobsite, and Monroe Jobsite constitutes six violations of section 409 of TSCA, 15 U.S.C. § 2689.

Count 22

33. Firms performing renovations on target housing are required, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material to collect falling paint debris, pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C).
34. At the Gilpin Jobsite, no plastic sheeting or other disposable impermeable material was covering the ground to collect falling paint debris while removing exterior painted surfaces known to contain lead-based paint, in violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).
35. Respondents' failure to cover the ground with plastic sheeting or other disposable impermeable material constitutes a violation of section 409 of TSCA, 15 U.S.C. § 2689.

Counts 23 and 24

36. Firms performing renovations on target housing are required at the conclusion of each work day to ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, pursuant to 40 C.F.R. § 745.85(a)(4)(ii).
37. At both the Elm Jobsite and Logan Jobsite, waste that had been collected from renovation activities was stored in open containers and on the exposed ground, failing to prevent the release of dust and debris out of the work area and failing to prevent access to dust and debris, in violation of 40 C.F.R. § 745.85(a)(4)(ii).
38. Respondents' failure to store waste from renovation activities under containment, in an enclosure, or behind a barrier at both the Elm Jobsite and Logan Jobsite constitutes two violations of section 409 of TSCA, 15 U.S.C. § 2689

V. SETTLEMENT

39. The EPA and Respondents agree that settlement of this matter is in the public interest, and the EPA and Respondents agree that execution of this CCCA and issuance of a final order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
40. In determining the amount of any penalty to be assessed, the EPA considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondents, the ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior violations, the degree of culpability, and such other matters as justice may require, in accordance with section 16 of TSCA, 15 U.S.C. § 2615.
41. By signing this CCCA, Respondents: (a) admit that Respondents were subject to the RRP requirements, 40 C.F.R. part 745, subpart E, at the time the work described herein was being conducted; (b) admit the jurisdictional allegations made herein; (c) neither admit nor deny the factual allegations contained herein; and (d) consent to the assessment of the penalty specified in this CCCA.
42. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, the EPA has determined that a civil penalty of thirty thousand dollars (\$30,000) is appropriate to settle this matter.
43. Respondents consent and agree to pay a civil penalty in the amount of thirty thousand dollars (\$30,000) in the manner described below.
44. Payment by Respondents of the full penalty amount is due within thirty (30) calendar days of the Effective Date of the Final Order issued by the EPA Regional Judicial Officer adopting this CCCA. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 A.M. Eastern Time to be considered received that day.
45. Payment shall be made by one of the following methods. The payment shall be made by remitting a check or making a wire transfer or online payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any commercial carrier or signed receipt confirmation:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If sent by wire transfer: Wire transfers must indicate the name and docket number of this case and 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 Number: 68010727
SWIFT Address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: U.S. Environmental Protection Agency

Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

U.S. Treasury Contact Information:
REX (Remittance Express): 866-234-5681

Online debit and credit card payment:

www.Pay.gov
Enter “sfo 1.1” in the form search box. Open form and complete required fields.

46. At the time of payment, a copy of the check or notification of other type of payment, including proof of the date payment was made, shall be sent at the same time to:

Kristin Jendrek
U.S. EPA Region 8 (8ENF-AT-TP)
Technical Enforcement Program
1595 Wynkoop St.
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

47. In the event payment is not received by the specified due date, interest accrues from thirty (30) days prior to the applicable due date, at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
48. A handling charge of fifteen dollars (\$15) shall be assessed the thirty-first (31st) day from the due date of any payment, and for each subsequent thirty (30) day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any

unpaid principal amount if payment is not received within ninety (90) days of the due date. Payments are first applied to outstanding handling charges, six (6%) percent penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

49. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this CCCA.

VI. GENERAL PROVISIONS

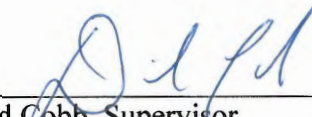
50. The parties agree to submit this CCCA to the Regional Judicial Officer with a request that it be incorporated into a final order.
51. This CCCA, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondents, and Respondents' officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondents, including but not limited to any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this CCCA.
52. This CCCA, upon incorporation into a final order and full satisfaction by both parties, shall only resolve Respondents' liability for federal civil penalties for the violations and statements of fact and conclusions of law alleged in this CCCA.
53. Respondents waive any and all available rights to judicial or administrative review or other remedies that Respondents may have, with respect to any issue of fact or law or any terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706.
54. This CCCA does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this CCCA is without prejudice to, all rights against Respondents with respect to all other matters including, but not limited to, the following:
- Claims based on a failure by Respondents to meet a requirement of this CCCA, including any claims for costs which are caused by Respondents' failure to comply with this CCCA;
 - Claims based on criminal liability; and,
 - Claims based on any other violations of the Act or federal or state law.
55. Nothing in this CCCA shall relieve Respondents of the duty to comply with TSCA and its implementing regulations.
56. Failure by Respondents to comply with any of the terms of this CCCA shall constitute a breach of the CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and for such other relief as may be appropriate.
57. Respondents agree that the penalty specified in this CCCA and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
58. Each party to this action shall bear its own costs and attorney fees, if any.

59. The undersigned representative of Respondents certifies that he/she is fully authorized to enter into the terms and conditions of the CCCA and to bind Respondents to the terms and conditions of this CCCA.
60. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CCCA is the date on which the Final Order is filed.


**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 8,**

Complainant.

Date: 4/18/17

By: 
David Cobb, Supervisor
Toxics and Pesticides Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice (8ENF-AT-TP)
U.S. Environmental Protection Agency,
Region 8

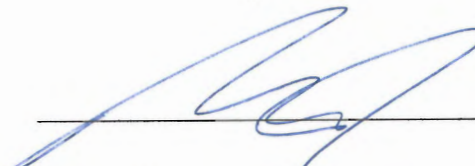
Date: 4/17/17

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice (8ENF-L)
U.S. Environmental Protection Agency,
Region 8

KGN Asset Management, LLC et al.

Respondents.

Date: 4/16/17

By: 
Printed Name: Keith Nylund
Title: President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **KGN ASSET MANAGEMENT, LLC, KGN ASSET MANAGEMENT, INC., & RESTORATION REALTY, INC.; DOCKET NO.: TSCA-08-2017-0005** was filed with the Regional Hearing Clerk on April 25, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on April 25, 2017, to:

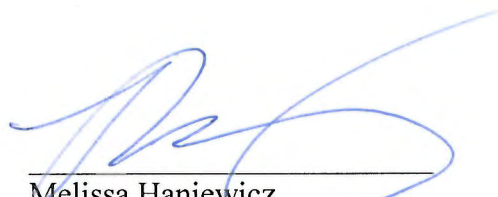
Respondent

Keith Nylund, President
KGN Asset Management, LLC
KGN Asset Management, Inc.
Restoration Realty, Inc.
423 Gilpin Street
Denver, Colorado 80209

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 25, 2017



Melissa Haniewicz
Regional Hearing Clerk

