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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: ) DOCKET NO. CAA-10-2019-0038  
)  
KELLER SUPPLY CO., ) **CONSENT AGREEMENT**  
)  
Seattle, Washington, )  
)  
Respondent. )  
)

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Keller Supply Co. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. On September 5, 2018, EPA notified Respondent that EPA had found that Respondent committed the alleged violations described in Part III of this Consent Agreement.

2.5. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. EPA has promulgated performance standards for new residential wood heaters pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A). These standards are codified at 40 C.F.R. Part 60, Subpart AAA, Standards of Performance for New Stationary Sources, Standards of Performance for New Residential Wood Heaters (“Subpart AAA”).

3.2. According to 40 C.F.R. § 60.530(a), Subpart AAA applies to persons and entities who manufacture, sell, offer for sale, import for sale, distribute, offer to distribute, introduce or deliver for introduction into commerce in the United States, or install or operate an affected wood heater.

3.3. Section 302(e) of the CAA, 42 U.S.C. § 7602, defines “person” to include an individual, corporation, partnership, or association.

3.4. 40 C.F.R. § 60.530 defines “affected wood heater” to include each adjustable burn rate wood heater, single burn rate wood heater, and pellet stove manufactured on or after July 1, 1988, with a current EPA certificate of compliance issued prior to May 15, 2015 according to the certification procedures in effect in Subpart AAA at the time of certification, and all other residential wood heaters as defined in § 60.531 that are manufactured or sold on or after May 15, 2015, and that are not otherwise exempt under Subpart AAA.

3.5. 40 C.F.R. § 60.531 defines “wood heater” as an enclosed, wood burning-appliance capable of and intended for residential space heating or space heating and domestic water heating.

3.6. 40 C.F.R. § 60.531 defines “commercial owner” to mean any person who owns or controls a wood heater in the course of the business of the manufacture, importation, distribution (including shipping and storage), or sale of the wood heater.

3.7. Under 40 C.F.R. § 60.531, “sale” is defined as the transfer of ownership or control.

3.8. Under 40 C.F.R. § 60.538(a), no person is permitted to advertise for sale, offer for sale, sell or operate an affected wood heater that does not have affixed to it a permanent label pursuant to 40 C.F.R. § 60.536(b) through (e), as applicable.

3.9. 40 C.F.R. § 60.536(b) through (e) specify the permanent label requirements for adjustable burn rate wood heaters and pellet stoves, single burn rate wood heaters, and affected wood heaters manufactured in the United States for export, including in relevant part, statements certifying that the labeled wood heater complies with 2015 or 2020 particulate emission standards.

3.10. Under 40 C.F.R. § 60.532(a), unless otherwise exempted, each affected wood heater sold at retail on or after May 15, 2015, must be certified not to discharge into the atmosphere any gases that contain particulate matter in excess of a weighted average of 4.5 g/hr (0.010 lb/hr)—the 2015 particulate emission standard—except that a wood heater manufactured before May 15, 2015 may be sold at retail on or before December 31, 2015.

3.11. Respondent is a corporation organized under the laws of the state of Washington and is therefore a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602.

#### **COUNT 1**

3.12. On or about February 16, 2017, Respondent sold a Vogelzang-brand coal-burning heater (Model PB65XL) to a retailer in the United States, describing it as a “wood or coal heater.”

3.13. The Vogelzang-brand coal-burning heater did not have affixed to it a permanent label that meets the requirements of 40 C.F.R. § 60.536(b) through (e).

3.14. Respondent’s sale of the Vogelzang-brand heater on or about February 16, 2017, was in violation of 40 C.F.R. § 60.538(a).

#### **COUNT 2**

3.15. On or about July 26, 2016, Respondent sold a Napoleon-brand wood heater (Model 1600CN1) to a retailer in the United States.

3.16. The Napoleon-brand wood heater did not have affixed to it a permanent label that meets the requirements of 40 C.F.R. § 60.536(b) through (e).

3.17. Respondent's sale of the Napoleon-brand heater on or about July 26, 2016, was in violation of 40 C.F.R. § 60.538(a).

### **COUNT 3**

3.18. On or about July 28, 2016, Respondent sold a Napoleon-brand wood heater (Model 1600CN1) to a retailer in the United States.

3.19. The Napoleon-brand wood heater did not have affixed to it a permanent label that meets the requirements of 40 C.F.R. § 60.536(b) through (e).

3.20. Respondent's sale of the Napoleon-brand heater on or about July 28, 2016, was in violation of 40 C.F.R. § 60.538(a).

### **COUNT 4**

3.21. On or about October 6, 2016, Respondent sold a Napoleon-brand wood heater (Model 1600CN1) to a retailer in the United States.

3.22. The Napoleon-brand wood heater did not have affixed to it a permanent label that meets the requirements of 40 C.F.R. § 60.536(b) through (e), as applicable.

3.23. Respondent's sale of the Napoleon-brand heater on or about October 6, 2016, was in violation of 40 C.F.R. § 60.538(a).

### **COUNT 5**

3.24. On or about November 16, 2017, Respondent sold a Napoleon-brand wood heater (Model NZ26) to a retailer in the United States.

3.25. The Napoleon-brand wood heater did not have affixed to it a permanent label that meets the requirements of 40 C.F.R. § 60.536(b) through (e)..

3.26. Respondent's sale of the Napoleon-brand heater on or about November 16, 2017, was in violation of 40 C.F.R. § 60.538(a).

3.27. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess administrative penalties for violations of Subpart AAA.

3.28. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$46,192 per day of violation.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). EPA also considered Respondent's efforts to address the alleged violations. After commencement of an enforcement action by EPA, Respondent located the Vogelzang-brand coal-burning heater and one of the four Napoleon-brand wood heaters, and found that the retailers who had purchased them had not sold them to consumers. Respondent issued the retailers a full refund and the two heaters were returned to Respondent. Respondent located a second Napoleon-brand wood heater, which was in use by a consumer, and paid to replace it and install a compliant wood heater for the consumer. A third Napoleon-brand heater had been damaged and had been returned to Respondent for a full refund prior to commencement of this action. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$8,250 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
[young.teresa@epa.gov](mailto:young.teresa@epa.gov)

John Keenan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
[keenan.john@epa.gov](mailto:keenan.john@epa.gov)

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the

CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

12-18-18

FOR RESPONDENT:

  
\_\_\_\_\_  
GEORGE W. DEBELL, Vice President  
Keller Supply Co.

DATED:

1/29/2019

FOR COMPLAINANT:

  
\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2019-0038
	)	
KELLER SUPPLY CO.,	)	<b>FINAL ORDER</b>
	)	
Seattle, Washington,	)	
	)	
Respondent.	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 12<sup>th</sup> day of February, 2019.



RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Keller Supply Co., Docket No.: CAA-10-2019-0038**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

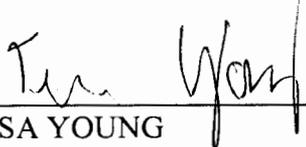
The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle Meinhardt  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

George W. Debell  
Vice President  
Keller Supply Co.  
3209 17th Avenue West  
Seattle, Washington 98119

DATED this 13 day of February 2019.

  
\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10