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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. TSCA-08-2007-0008

In the Matter of: )  
)  
Gerald A. Kelly Trust, ) **PENALTY COMPLAINT AND NOTICE OF**  
) **OPPORTUNITY FOR HEARING**  
)  
Respondent. )

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**INTRODUCTION (JURISDICTION)**

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1. This civil administrative enforcement action is authorized by Congress in the Residential Lead-Based Paint Hazard Reduction Act ("Residential Lead Hazard Act") and the Toxic Substances Control Act ("TSCA"). 42 U.S.C. § 4851 *et seq.* and 15 U.S.C. § 2601 *et seq.* EPA regulations authorized by the statutes are set out in part 745, subpart F of title 40 of the Code of Federal Regulations and, as set out in 42 U.S.C. § 4852d (b)(5), violations of the regulations constitute violations of section 16 of TSCA. The rules for this proceeding are 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 ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

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2. The undersigned EPA officials have been properly delegated the authority to issue this action.

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3. EPA alleges that Respondent has failed to comply with federal regulations regarding the disclosure of lead-based paint hazards, found at 40 C.F.R. part 745, subpart F and, therefore, is in violation of the Residential Lead Hazard Act and TSCA. As a result, EPA proposes the assessment of a civil penalty, as more fully explained below. 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.

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**NOTICE OF OPPORTUNITY FOR A HEARING**

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4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to contest (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty, or both.

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5. To disagree with the Complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street, Denver, CO 80202-1129) not more than 30 days after receiving this Complaint and provide a copy to the enforcement attorney listed below. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of

1 Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN**  
2 **ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE**  
3 **RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR**  
4 **PROPOSED PENALTY AND RESULT IN A DEFAULT JUDGMENT AND**  
5 **ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**  
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### 7 QUICK RESOLUTION

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9 6. Respondent may resolve this proceeding at any time by paying the specific penalty  
10 proposed in the Complaint. Such payment need not contain any response to, or admission of,  
11 the *allegations* in the Complaint. Such payment constitutes a waiver of Respondent's right to  
12 contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice  
13 for a full explanation of the quick resolution process, including how extensions of time to pay  
14 can be obtained.  
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### 16 SETTLEMENT NEGOTIATIONS

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18 7. EPA encourages settlement discussions through informal settlement conferences.  
19 If you want to pursue the possibility of settling this matter, or have any other questions, contact  
20 Eduardo Quintana, Senior Enforcement Attorney, at 303-312-6924 or 1-800-227-8917; extension  
21 312-6924 or at the address below. **Please note that contacting the attorney or requesting a**  
22 **settlement conference does NOT delay the running of the 30 day period for either paying**  
23 **the penalty or filing an answer and requesting a hearing.**  
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### 25 ALLEGATIONS

26  
27 8. Respondent is the Gerald A. Kelly Trust, ("Respondent").  
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29 9. EPA regulations require, among other things, that an owner of housing  
30 constructed before 1978 shall, prior to obligating a lessee under a contract to lease or rent the  
31 housing, *provide or include* in or attach to the leasing contract, (1) an EPA-approved lead hazard  
32 information pamphlet, (2) a lead warning statement, (3) a statement disclosing the presence of  
33 any known lead-based paint and/or lead-based paint hazards (or lack of knowledge of such  
34 presence), (4) a list of any records or reports available to the owner related to lead-based paint or  
35 hazards (or a statement that no such records exist), (5) a statement by the renter/lessee that he/she  
36 received the above information, and (6) signatures (dated) by both parties certifying the accuracy  
37 of their statements. 40 C.F.R. §§ 745.107(a)(1) and 745.113(b).  
38

39 10. Respondent is, and at all times relevant to this Complaint has been, the owner, as  
40 that term is defined in 40 C.F.R. § 745.103, of the Academy Manor Apartment property located  
41 at 1530 Jamboree Drive, Colorado Springs, Colorado 80918.  
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1           11. The property located at 1530 Jamboree Drive is “residential real property” within  
2 the meaning of § 1004(24) of the Residential Lead-Based Paint Hazard Reduction Act of 1992,  
3 42 U.S.C. § 4851b(24), that was constructed before 1978.

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5           12. The Academy Manor Apartment property consists of approximately 64  
6 “residential dwelling” units, within the meaning of § 1004(23) of the Residential Lead-Based  
7 Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851b(23), and 40 C.F.R. § 745.103.

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9           13. On or about March 1, 1999, EPA issued a notice of noncompliance to Respondent  
10 for failure to comply with several of the disclosure requirements of the Residential Lead Hazard  
11 Act.

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13           14. On April 20, 2007, Respondent entered into written lease agreement (lease  
14 contract) with Gayle Razor for the rental of Apartment 8264-C, a residential apartment unit in the  
15 Academy Manor Apartment complex. As part of entering into this lease agreement, Respondent  
16 failed to comply with the following requirements:

- 17  
18           a. Respondent failed to provide an EPA-approved lead hazard information pamphlet  
19 prior to entering into the lease contract of Apartment 8264-C with Gayle Razor as  
20 described above in violation of 40 C.F.R. § 745.107(a)(1), 42 U.S.C.  
21 § 4852d(b)(5), 15 U.S.C. § 2689.  
22  
23           b. Respondent failed to include a lead warning statement within the lease contract  
24 described above before the renter/lessee was obligated in violation of  
25 40 C.F.R. § 745.113(b)(1), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2689.  
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27           c. Respondent failed to include a statement disclosing the presence of any known  
28 lead-based paint and/or lead-based paint hazards (or lack of knowledge of such  
29 presence), within the lease contract described above before the renter/lessee was  
30 obligated in violation of 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), 15  
31 U.S.C. § 2689.  
32  
33           d. Respondent failed to include a list of any records or reports available to the owner  
34 related to lead-based paint or hazards (or a statement that no such records exist)  
35 within the lease contract described above before the renter/lessee was obligated in  
36 violation of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), 15 U.S.C. §  
37 2689.  
38  
39           e. Respondent failed to include a statement by the renter/lessee that she received the  
40 information described above in violation 40 C.F.R. § 745.113(b)(4), 42 U.S.C.  
41 § 4852d(b)(5), 15 U.S.C. § 2689.  
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- 1 f. Respondent failed to include the signature of the lessor and lessee certifying to the  
2 accuracy of their statements, to the best of their knowledge along with the  
3 dates of signature, in violation 40 C.F.R. § 745.113(b)(6), 42 U.S.C.  
4 § 4852d(b)(5), 15 U.S.C. § 2689.  
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### 6 PROPOSED CIVIL PENALTY 7

8 15. The Residential Lead Hazard Act and TSCA, as amended by subsequent penalty  
9 adjustment law, authorize the assessment of a civil penalty of up to \$11,000 for each violation of  
10 the EPA regulations. In determining the amount of any civil penalty assessed, EPA is required to  
11 take into account the nature, circumstances, extent and gravity of the violation or violations  
12 alleged and, with respect to the violator, ability to pay, effect on ability to continue to do  
13 business, any history of prior such violations, the degree of culpability, and such other factors as  
14 justice may require. **EPA proposes that a penalty of Four Thousand Nine Hundred and  
15 Fifty Dollars (\$4,950.00)** be assessed against Respondent for the violations alleged above.  
16

17 16. EPA calculates penalties through the application of a national enforcement  
18 response policy that provides a rational, consistent and equitable calculation methodology for  
19 applying the statutory factors to particular cases. As discussed in the policy, the severity of each  
20 violation alleged in the complaint is based on the extent to which each violation impairs the  
21 ability of a lessee to assess information regarding hazards associated with lead-based paint, and  
22 precludes the lessee from making a fully informed decision whether to lease the housing or take  
23 appropriate measures to protect against lead-based paint hazards.  
24

25 17. The penalty was calculated using the Section 1018 of Title X of the Residential  
26 Lead-Based Paint Hazard Reduction Act – Disclosure Rule Enforcement Response Policy (ERP),  
27 dated February 2000, a copy of which is enclosed.  
28

#### 29 Nature, Circumstances, Extent and Gravity of Violations 30

31 The nature of the violations is hazard assessment, as discussed on page 9 of the ERP. The  
32 circumstance level of the violations ranged from Level 1 to Level 6, based on the circumstance  
33 level matrix in Appendix B of the ERP. The extent level of the violations was minor, based on  
34 the extent level matrix on page B-4 of the ERP. Using the gravity-based penalty matrix on page  
35 B-4 of the ERP, which combines the circumstance and extent level for each Count, the gravity-  
36 based penalty amount is \$4,950.00.  
37

#### 38 Statutory Factors 39

40 Ability to pay/ability to continue in business: EPA does not have any information on the  
41 Respondent's ability to pay. No adjustment has been made using this factor.  
42

1 History of prior violations: This factor only adjusts the penalty upward. No history of prior  
2 violations found, so no adjustment has been made using this factor

3  
4 Degree of culpability: The Residential Lead Hazard Act has been in effect since 1996. The  
5 Respondent should have had sufficient knowledge to recognize the hazard created by his  
6 conduct, and/or significant control over the situation to avoid committing the violation. A notice  
7 of noncompliance was issued to Respondent on or about March 1, 1999. EPA has increased the  
8 penalty by 25%.

9  
10 Other factors as justice may require:

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12 No adjustments made at this time regarding these factors, except for the following:

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14 Adjustment for attitude: Since Respondent took steps to comply with the disclosure rule  
15 after the EPA inspection, EPA has reduced the penalty by 20%.

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17 **The total adjusted penalty is \$4,950.**

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19 18. The ALJ is not bound by EPA's penalty policy nor the penalty proposed in the  
20 Complaint and may assess a penalty above the proposed amount, up to the maximum amount  
21 authorized by the statute.  
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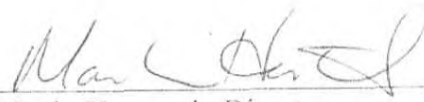
1 **In the Matter of: Gerald A. Kelly Trust**

2 **Docket No.:** TSCA-08-2007-0008


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5 To discuss settlement or ask any questions you may have about this process, please  
6 contact Eduardo Quintana, Senior Enforcement Attorney, at the number or address below.

7  
8 United States Environmental Protection Agency  
9 Region 8, Office of Enforcement, Compliance and  
10 Environmental Justice, Complainant


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12  
13  
14  
15 Date: 9/20/07

16 By:   
17 Martin Hestmark, Director  
18 Technical Enforcement Program

19  
20 Date: SEP 21 2007

21 By:   
22 Michael T. Risner, Director  
23 David J. Janik, Supervisory Attorney  
24 Legal Enforcement Program

25  
26 Date: 9/20/2007

27   
28 Eduardo Quintana,  
29 Senior Enforcement Attorney  
30 Legal Enforcement Program  
31 U.S.E.P.A. Region 8  
32 1595 Wynkoop Street (ENF-L)  
33 Denver, CO 80202-1129  
34 303.312.6924  
35 1.800.227.6924; ext. 312-6924  
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**CERTIFICATION OF SERVICE**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

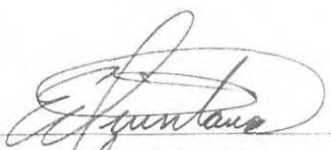
I hereby certify that on this 25 day of September, 2007, a copy of the foregoing Penalty Complaint and Notice of Opportunity for Hearing, with enclosures was served by certified mail, return receipt requested to:

Roderick R. Hubbard  
Gerald A. Kelly Trust  
6470 Timber Bluff PT.  
Colorado Springs, CO 80918-6204

The original and one copy was hand-delivered to:

Tina Artemis  
Region 8 Hearing Clerk  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

Date: 25 2007

Signature: 

Name and Title: Attorney