



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2007 NOV -8 AM 11:20

RECEIVED
REGIONAL OFFICE

DOCKET NO.: TSCA-08-2007-0008

IN THE MATTER OF:)	
)	
GERALD A. KELLY TRUST,)	FINAL ORDER
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, 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 receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 8th DAY OF November, 2007

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 NOV -9 AM 11:20

Docket No. TSCA-08-2007-0008

In the Matter of:)
)
Gerald A. Kelly Trust,) **CONSENT AGREEMENT**
)
Respondent.)
)
)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Gerald A. Kelly Trust, by their undersigned representatives, hereby consent and agree as follows:

1. On September 25, 2007, Complainant issued a Complaint alleging certain violations of the Residential Lead-Based Paint Hazard Reduction Act ("Residential Lead Hazard Act") and the Toxic Substances Control Act ("TSCA") The Complaint proposed a civil penalty for the violation alleged therein.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondent consents and agrees to pay a civil penalty in the amount of **one thousand dollars (\$1,000)** in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued

by the Mellon Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case (Gerald A. Kelly Trust; Docket No. TSCA-08-2007-0008), for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For payments sent in a manner *other* than by regular mail or for payments other than by check, please see the instructions in attachment 1 entitled "Collection Information."

A copy of the check shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (I.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty 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 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.

7. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

8. Nothing in this Consent Agreement 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 Respondent's failure to perform pursuant to the terms of this Consent Agreement.

9. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.

10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.


11. Each party shall bear its own costs and attorney fees in connection with this matter.

12. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.


In the Matter of: Gerald A. Kelly Trust
Docket No.: TSCA-08-2007-0008

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

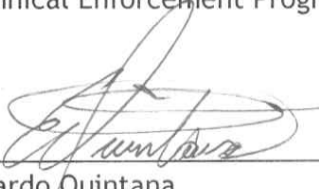
Date: 6 NOVEMBER 2007

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

Date: 11/6/07

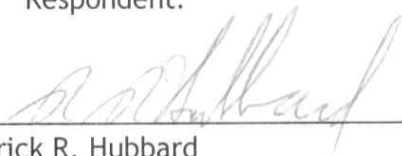
By: 
Martin Hestmark, Director
Technical Enforcement Program

Date: 11/5/2007

By: 
Eduardo Quintana
Enforcement Attorney
Legal Enforcement Program

Gerald A. Kelly Trust,
Respondent.

Date: 11-2-07

By: 
Roderick R. Hubbard

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **GERALD A. KELLY TRUST, DOCKET NO.: TSCA-08-2007-0008**. These documents were filed with the Regional Hearing Clerk on November 8, 2007.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Eduardo Quintana, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 8, 2007, to:


Roderick R. Hubbard
Eklund Development LLC.
c/o Pine Bluffs Apts.
6470 Timber Bluff Point
Colorado Springs, CO 80918

E-mailed to:

Honorable Susan Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges (1900L)
1200 Pennsylvania Street, NW
Washington, DC 20460-2001

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

November 8, 2007


Tina Artemis
Paralegal/Regional Hearing Clerk

