



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2019 AUG 20 AM 9:03

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: TSCA-08-2019-0004

IN THE MATTER OF:

KELLY CUSTOM PAINTING LLC

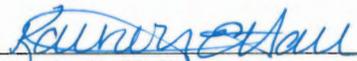
FINAL ORDER

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 Expedited Settlement 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 Expedited Settlement Agreement, effective immediately upon filing this Expedited Settlement Agreement and Final Order.

SO ORDERED THIS 19<sup>th</sup> DAY OF August, 2019.

  
Katherin E. Hall  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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\_\_\_\_\_  
IN THE MATTER OF: )  
)  
Kelly Custom Painting LLC )  
17615 East Lasalle Drive )  
Aurora, Colorado 80013 )  
)  
Respondent. )  
\_\_\_\_\_

**EXPEDITED SETTLEMENT AGREEMENT**

Complainant, the United States Environmental Protection Agency, Region 8, and Respondent, Kelly Custom Painting LLC, by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This Expedited Settlement Agreement (the Agreement) is being entered into by the EPA, by its duly delegated officials, and by Respondent 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, 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 \$39,873 for each violation of section 409.

### III. RESPONDENT

8. Respondent is a “person” for purposes of sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615, 2689.
9. Respondent is a “firm” as that term is defined in 40 C.F.R. § 745.83.

### IV. ALLEGED VIOLATIONS

10. On September 10, 2018, the homeowner of a residential property located at 4593 N. Decatur Street, Denver, CO 80211 (the Jobsite) contacted the EPA regarding work performed at the property.
11. The Jobsite is a residential property constructed prior to 1978 and is “target housing” as that term is defined in section 401 of TSCA, 15 U.S.C. § 2681.
12. Based on information available to the EPA, the homeowner entered into a contract with Colorado Western Construction on May 24, 2017, to include roof replacement, window replacement, gutter replacement, and exterior painting work. Respondent was subcontracted by Colorado Western Construction to perform various aspects of this project.
13. During the period from January 2018 through June 2018 Respondent performed work at the Jobsite including scraping, sanding and priming of exterior painted surfaces.
14. Respondent conducted a “renovation” as that term is defined at 40 C.F.R. § 745.83.
15. Firms performing renovations on target housing must apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a).
16. Respondent failed to obtain initial certification from the EPA prior to performing a renovation on target housing, as required by 40 C.F.R. § 745.89(a).
17. Respondent’s 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.
18. Firms performing renovations on target housing must retain all records necessary to demonstrate compliance with the RRP Rule for a period of three (3) years following the completion of the renovation activities, as required by 40 C.F.R. § 745.86(a).
19. The EPA requested Respondent’s records demonstrating compliance with the RRP Rule for renovation work at the Jobsite and Respondent was unable to provide records as required by 40 C.F.R. § 745.86(a).
20. Respondent’s failure to keep records demonstrating compliance with the RRP Rule constitutes a violation of 40 C.F.R. § 745.86(a) and sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614, 2689.

## V. SETTLEMENT

21. The EPA and Respondent agree that settlement of this matter is in the public interest, and the EPA and Respondent agree that execution of this Agreement 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.
22. Pursuant to section 16 of TSCA, 15 U.S.C. § 2615, and based in part on the size of Respondent's business, the nature, circumstances, extent and gravity of the violations alleged, and other relevant factors, the EPA agrees that an appropriate civil penalty to settle this matter is four hundred dollars (\$400).
23. By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Agreement have been corrected, and Respondent has submitted true and accurate documentation of such correction; (2) Respondent has provided payment of the civil penalty; and (3) Respondent releases that penalty to the EPA upon incorporation of the Agreement into a final order.

Within thirty (30) days of Respondent's receipt of this Agreement, Respondent must send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount four hundred dollars (\$400) in payment of the full penalty amount to the following address:

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

**The following Payment Number for this Agreement must be included on the check:  
ESA-R8-TSCA**

**The signed Agreement and a copy of the check must be sent by certified mail to:**

Kristin Jendrek (8ENF-AT-P)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

24. Respondent agrees that the penalty specified in this Agreement and any interest paid shall not be deductible for purposes of local, state, or federal taxes.
25. This settlement is subject to the following terms and conditions with respect to the violations alleged:
  - a. Respondent, by signing below, admits the jurisdictional allegations of the Agreement, neither admits nor denies the specific factual allegations contained in the Agreement and consents to the assessment of the penalty as stated above.
  - b. Each party to this action shall bear its own costs and attorney fees, if any.

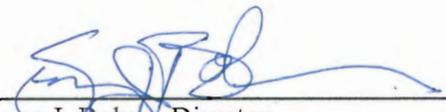
- c. Payment by Respondent shall constitute a waiver of any and all available rights to judicial or administrative review or other remedies that the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Agreement, including any right to appeal the final order.
26. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this Agreement.
27. This Agreement does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to, the following:
- a. Claims based on a failure by Respondent to meet a requirement of this Agreement, including any claims for costs which are caused by Respondent's failure to comply with this Agreement;
  - b. Claims based on criminal liability; and,
  - c. Claims based on any other violations of TSCA or federal or state law.
28. If the signed original Agreement with an attached copy of the check is not returned to the EPA at the above address in correct form by Respondent within thirty (30) days of the date of Respondent's receipt of this Agreement, the Agreement may be withdrawn without prejudice to the EPA's ability to file an enforcement action for the violations alleged in the Agreement.
29. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's 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 Agreement contains all terms of the settlement agreed to by the Parties.
30. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of the Agreement and to bind Respondent to the terms and conditions of this Agreement.
31. Nothing in this Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.
32. The Parties agree to submit this Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.

The foregoing Expedited Settlement Agreement In the Matter of Kelly Custom Painting LLC, is hereby stipulated, agreed, and approved for entry.

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

**Complainant**

Date: 8/15/19

By:   
Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency,  
Region 8

**Kelly Custom Painting LLC**

**Respondent**

Date: 8/12/19

By:   
Printed Name: RYAN P. KELLY

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER** in the matter of **KELLY CUSTOM PAINTING LLC; DOCKET NO.: TSCA-08-2019-0004** was filed with the Regional Hearing Clerk on August 20, 2019.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on August 20, 2019, to:

Respondent

Melissa Kelly  
Kelly Custom Painting LLC  
17615 East Lasalle Drive  
Aurora, Colorado 80013

And emailed to:

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

August 20, 2019

  
Melissa Haniewicz  
Regional Hearing Clerk