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**\*\* FILED \*\***  
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U.S.EPA - Region 09

10 UNITED STATES  
11 ENVIRONMENTAL PROTECTION AGENCY  
12 REGION 9

13 **In the Matter of:**

14 **K Kittle LLC dba Rebath & 5 Day Kitchens**  
15 **Respondent.**

**Docket No. TSCA-09-2017- 0006**

**CONSENT AGREEMENT AND FINAL  
ORDER PURSUANT TO 40 C.F.R.  
§§ 22.13 AND 22.18**

16 **CONSENT AGREEMENT**

17 The United States Environmental Protection Agency (“EPA”), Region 9, and K Kittle  
18 LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent  
19 Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this  
20 matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

21 **I. AUTHORITY, JURISDICTION AND PARTIES**

22 1. This a civil administrative penalty action brought against Respondent pursuant to Section  
23 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation of  
24 Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Sections 402 and 406 of  
25 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing rules issued at 40 C.F.R. Part 745,  
26 Subpart E.  
27

28 In the Matter of: K Kittle LLC ReBath & 5 Day Kitchens  
Consent Agreement and Final Order 1

1 2. Complainant is the Director of the Enforcement Division, EPA, Region 9, who has been  
2 duly delegated the authority to bring and settle this action under TSCA.

3 3. Respondent, an Arizona corporation located in Phoenix, Arizona, is a residential kitchen  
4 and bathroom designer and remodeler.  
5

6 **II. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

7 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40 C.F.R. Part 745, Subpart  
8 E requires a person who performs for compensation a renovation of target housing to provide a  
9 lead hazard information pamphlet to the owner and occupant before beginning the renovation.  
10

11 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§ 2682(a) and (c), 40 C.F.R.  
12 Part 745, Subpart E sets forth requirements for certification of individuals and firms engaged in  
13 lead-based paint activities and work practice standards for renovation, repair and painting  
14 activities in target housing.

15 6. "Target housing" means any housing constructed prior to 1978, except housing for the  
16 elderly or persons with disabilities (unless any child who is less than six years of age resides or is  
17 expected to reside in such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15  
18 U.S.C. § 2681.  
19

20 7. "Person" means any natural or judicial person including any individual, corporation,  
21 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any  
22 interstate body; and any department, agency, or instrumentality of the Federal Government. 40  
23 C.F.R. § 745.83.  
24

25 8. "Firm" means a company, partnership, corporation, sole proprietorship, or individual  
26 doing business, association, or other business entity; a Federal, State, Tribal, or local government  
27

1 agency; or a nonprofit organization. 40 C.F.R. § 745.83.

2 9. “Renovation” means the modification of any existing structure, or portion thereof, that  
3 results in the disturbance of painted surfaces, unless that activity is part of an abatement as  
4 defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the  
5 removal, modification or repair of painted surfaces or painted components (e.g., modification of  
6 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,  
7 scraping, or other such activities that may generate paint dust); the removal of building  
8 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting  
9 holes in painted surfaces to install blown-in insulation or to gain access to attics planning  
10 thresholds to install weatherstripping), and interim controls that disturb painted surfaces....The  
11 term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.  
12

13  
14 10. “Painted surface” means a component surface covered in whole or in part with paint or  
15 other surface coatings. 40 C.F.R. § 745.83.  
16

17 11. “Renovator” means any individual who either performs or directs workers who perform  
18 renovations. A certified renovator is a renovator who has successfully completed a renovator  
19 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.  
20

21 12. “Pamphlet” means the EPA pamphlet titled, “Renovate Right: Important Lead Hazard  
22 Information for Families, Child Care Providers and Schools,” developed under Section 406(a) of  
23 TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet  
24 approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. 40  
25 C.F.R. § 745.83.

26 13. No more than 60 days before beginning renovation activities in any residential dwelling  
27

1 unit of target housing, the firm performing the renovation must provide the owner of the  
2 unit with the “pamphlet,” as that term is defined at 40 C.F.R. § 745.83, and either obtain from the  
3 owner a written acknowledgment that the owner has received the “pamphlet” or obtain a  
4 certificate of mailing the “pamphlet” at least 7 days prior to the renovation. 40 C.F.R.  
5 § 745.84(a)(1).  
6

7 14. Firms performing renovations must retain documentation of compliance with the  
8 requirements of § 745.85, including documentation that a certified renovator was assigned to the  
9 project; that the certified renovator provided on-the-job training for workers used on the project;  
10 that the certified renovator performed or directed workers who performed all of the work practice  
11 tasks described in § 745.85(a); and that the certified renovator performed the post-renovation  
12 cleaning verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).  
13

14 15. Firms performing renovations must ensure that a certified renovator is assigned to each  
15 renovation performed by the firm and discharges all of the certified renovator responsibilities  
16 identified in § 745.90. 40 C.F.R. § 745.89(d)(2).  
17

18 16. A certified renovator must prepare the records required by § 745.86(b)(1)(ii) and (6). 40  
19 C.F.R. § 745.90(b)(8).  
20

21 17. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation  
22 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation  
23 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed  
24 \$37,500 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred  
25 after January 12, 2009 but before November 2, 2015.  
26

### 27 **III. ALLEGATIONS**

1 18. Respondent is a "person," as that term is defined at 40 C.F.R. § 745.83.

2 19. At all times relevant to this CAFO, Respondent was a "firm," as that term is defined at 40  
3 C.F.R. § 745.83.

4 20. At all times relevant to this CAFO, the residential property located at 2124 East Osborne  
5 Street, in Phoenix, Arizona 85016 ("Target Housing") was "target housing," as that term is  
6 defined at Section 401 of TSCA, 15 U.S.C. § 2681.

7  
8 21. Within the period of August 18, 2014, to August 22, 2014, Respondent performed  
9 renovations ("Renovations") as that term is defined at 40 C.F.R. § 745.83, for compensation at  
10 the Target Housing.

11  
12 FIRST CLAIM

13 22. Paragraphs 1-21 of this CAFO are realleged and are incorporated herein by reference.

14 23. Respondent did not obtain from the owner of the Target Housing a written  
15 acknowledgment that the owner has received the Pamphlet or obtain a certificate of mailing the  
16 Pamphlet at least 7 days prior to the Renovations.

17  
18 24. Respondent's failure to obtain from the owner of the Target Housing a written  
19 acknowledgment that the owner has received the Pamphlet or obtain a certificate of mailing the  
20 Pamphlet at least 7 days prior to the Renovations constitutes a violation of 40 C.F.R.  
21 § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

22  
23 SECOND CLAIM

24 25. Paragraphs 1-24 of this CAFO are realleged and are incorporated herein by reference.

25 26. Respondent did not retain documentation that a certified renovator was assigned to the  
26 project; that a certified renovator provided on-the-job training for workers used; that a certified  
27

1 renovator performed or directed workers who performed all of the work practice tasks described  
2 in § 745.85(a); and that a certified renovator performed the post-renovation cleaning verification  
3 described in § 745.85(b) for the Renovations performed at the Target Housing.  
4

5 27. Respondent's failures to retain documentation that a certified renovator was assigned to  
6 the project; that a certified renovator provided on-the-job training for workers used; that a  
7 certified renovator performed or directed workers who performed all of the work practice tasks  
8 described in § 745.85(a); and that a certified renovator performed the post-renovation cleaning  
9 verification described in § 745.85(b) for the Renovations performed at the Target Housing  
10 constitute four (4) violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of TSCA, 15 U.S.C.  
11 § 2689.  
12

### 13 THIRD CLAIM

14 28. Paragraphs 1-27 of this CAFO are realleged and are incorporated herein by reference.

15 29. Respondent did not ensure that a certified renovator discharged all of the certified  
16 renovator responsibilities identified in § 745.90 for the Renovations performed at the Target  
17 Housing.  
18

19 30. Respondent's failure to ensure that a certified renovator discharged all of the certified  
20 renovator responsibilities identified in § 745.90 for the Renovations performed at the Target  
21 Housing constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C.  
22 § 2689.  
23

### 24 **IV. RESPONDENT'S ADMISSIONS**

25 31. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
26 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
27

1 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section III  
2 of this CAFO; (iii) consents to the terms of this CAFO, including the assessment of the civil  
3 administrative penalty under Section V of this CAFO; (iv) waives any right to contest the  
4 allegations contained in Section III of this CAFO; and (v) waives the right to appeal the proposed  
5 Final Order contained in this CAFO.  
6

7 **V. CIVIL ADMINISTRATIVE PENALTY**

8 32. Respondent agrees to the assessment of a penalty in the amount of NINETEEN  
9 THOUSAND, EIGHT HUNDRED AND TEN DOLLARS (\$19,810) as final settlement of the  
10 civil claims against Respondent arising under TSCA as alleged in Section III of this CAFO.  
11

12 33. Respondent shall pay the assessed penalty no later than thirty (30) days after the effective  
13 date of the CAFO. The assessed penalty shall be paid by certified or cashier's check, payable to  
14 "Treasurer, United States of America," or paid by one of the other methods listed below and sent  
15 as follows:  
16

17 Regular Mail:  
18 U.S. Environmental Protection Agency  
19 Fines and Penalties  
20 Cincinnati Finance Center  
21 PO Box 979077  
22 St. Louis, MO 63197-9000

23 Wire Transfers:  
24 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the  
25 following information:  
26 Federal Reserve Bank of New York  
27 ABA = 021030004  
28 Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

In the Matter of: K Kittle LLC ReBath & 5 Day Kitchens  
Consent Agreement and Final Order 7

1 Overnight Mail:

2 U.S. Bank  
3 1005 Convention Plaza  
4 Mail Station SL-MO-C2GL  
5 ATTN Box 979077  
6 St. Louis, MO 63101

6 ACH (also known as REX or remittance express):

7 US Treasury REX/Cashlink ACH Receiver ABA = 051036706  
8 Account Number: 310006, Environmental Protection Agency  
9 CTX Format Transaction Code 22 - checking  
10 Physical location of US Treasury Facility 57000 Rivertech Court  
11 Riverdale, MD 20737  
12 Remittance Express (REX) 1-866-234-5681

11 On Line Payment:

12 This payment option can be accessed from the information below:

13 [www.pay.gov](http://www.pay.gov)

14 Enter "sfo1.1" in the search field

15 Open form and complete required fields

16 If clarification regarding a particular method of payment remittance is needed, contact the EPA  
17 Cincinnati Finance Center at 513-487-2091.

18 Concurrently, a copy of the check or notification that the payment has been made by one of the  
19 other methods listed above, including proof of the date payment was made, shall be sent with  
20 a transmittal letter indicating Respondent's name, the case title, and the docket number to the  
21 following addressees:

22 Regional Hearing Clerk  
23 Office of Regional Counsel (ORC-1)  
24 U.S. Environmental Protection Agency, Region 9  
25 75 Hawthorne Street  
26 San Francisco, California 94105

27 Max Weintraub  
28 Waste & Chemical Section (ENF-2-2)  
29 Enforcement Division  
30 U.S. Environmental Protection Agency, Region 9  
31 75 Hawthorne Street  
32 San Francisco, CA 94105

In the Matter of: K Kittle LLC ReBath & 5 Day Kitchens  
Consent Agreement and Final Order 8



1 34. Payment of the above civil administrative penalty shall not be used by Respondent or any  
2 other person as a tax deduction from Respondent's federal, state, or local taxes.

3 35. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph  
4 32 by the deadline specified in Paragraph 33, then Respondent shall pay to EPA a stipulated  
5 penalty of \$500 per day in addition to the assessed penalty. Stipulated penalties shall accrue  
6 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall  
7 become due and payable upon written request by EPA. In addition, failure to pay the civil  
8 administrative penalty by the deadline specified in Paragraph 33 may lead to any or all of the  
9 following actions:  
10

11 a. The debt being referred to a credit reporting agency, a collection agency, or to the  
12 Department of Justice for filing of a collection action in the appropriate United States District  
13 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,  
14 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.  
15

16 b. The debt being collected by administrative offset (i.e., the withholding of money payable  
17 by the United States to, or held by the United States for, a person to satisfy the debt the person  
18 owes the Government), which includes, but is not limited to, referral to the Internal Revenue  
19 Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.  
20

21 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend  
22 or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors  
23 or funds. 40 C.F.R. § 13.17.  
24

25 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,  
26 penalties charges, and administrative costs will be assessed against the outstanding amount that  
27

1 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the  
2 deadline specified in Paragraph 33. Interest will be assessed at an annual rate that is equal to the  
3 rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan  
4 account rate) as prescribed and published by the Secretary of the Treasury in the Federal  
5 Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).  
6 Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).  
7 Administrative costs for handling and collecting Respondent's overdue debt will be based on  
8 either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R.  
9 § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the  
10 Department of Justice, the Internal Revenue Service), that department or agency may  
11 assess its own administrative costs, in addition to EPA's administrative costs, for handling and  
12 collecting Respondent's overdue debt.  
13  
14

## 15 **VI. RESPONDENT'S CERTIFICATION**

16  
17 36. In executing this CAFO, Respondent certifies that it is now fully in compliance with the  
18 federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.

## 19 **VII. RETENTION OF RIGHTS**

20 37. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability  
21 for federal civil penalties for the violations and facts specifically alleged in Section III of this  
22 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability  
23 for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
24 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal  
25 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
26  
27  
28

1 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to  
2 address any violation of this CAFO or any violation not specifically alleged in Section III of this  
3 CAFO.

4  
5 38. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to  
6 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and  
7 permits.

8 **VIII. ATTORNEYS' FEES AND COSTS**

9  
10 39. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this  
11 proceeding.

12 **IX. EFFECTIVE DATE**

13 40. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective  
14 on the date that the final order contained in this CAFO, having been approved and issued by  
15 either the Regional Judicial Officer or Regional Administrator, is filed.

16  
17 **X. BINDING EFFECT**

18 41. The undersigned representative of Complainant and the undersigned representative of  
19 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
20 of this CAFO and to bind the party he or she represents to this CAFO.

21 42. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
22 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
23 and assigns.

24  
25 //

26  
27 //

1 FOR RESPONDENT, K KITTLE LLC DBA REBATH & 5 DAY KITCHENS

2  
3 6/6/17  
4 DATE

Lori Lund  
Name Lori Lund  
Title President  
K Kittle LLC

6  
7 FOR COMPLAINANT:

8  
9 7/7/17  
10 DATE

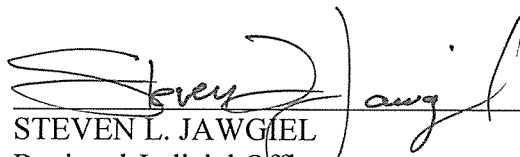
Kathleen H. Johnson  
Kathleen H. Johnson  
Director, Enforcement Division  
U.S. Environmental Protection Agency,  
Region 9

**FINAL ORDER**

Complainant and Respondent, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2017-~~006~~) be entered, and that Respondent shall pay a civil administrative penalty in the amount of NINETEEN THOUSAND, EIGHT HUNDRED AND TEN DOLLARS (\$19,810) and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

07/13/17  
DATE

  
STEVEN L. JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency,  
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order has been filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent by Certified Mail, Return Receipt Requested to:

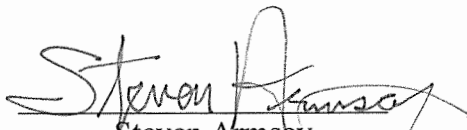
Lori Lund  
President  
K Kittle LLC  
4102 W Adams Street, Suites 4-6  
Phoenix, AZ 85009  
Certified Mail # 706 1370 0000 0748 5810

and Hand-Delivered to:

Brian Riedel  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Date:

July 11, 2017

  
Steven Armsey  
Regional Hearing Clerk  
U.S. EPA, Region IX