

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
 NextGen Remodeling LLC,) **Docket No. TSCA-07-2022-0098**
)
 Respondent.)
 _____)

EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

1. The U.S. Environmental Protection Agency (“EPA”) alleges that NextGen Remodeling LLC (“Respondent”), failed to comply with certain regulations governing residential property renovation, in violation of Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689.

2. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), requires the Administrator of EPA to promulgate regulations governing renovation and remodeling activities to ensure, among other things, that contractors engaged in such activities are certified by EPA to perform these activities. These regulations are codified at Part 745 of Title 40 of the Code of Federal Regulations.

3. On August 6, 2021, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted a records inspection at Respondent’s place of business in Kansas City, Missouri, to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”).

4. The EPA inspection revealed that Respondent had performed renovations for compensation at the following properties (“Properties”) in Kansas City, Missouri, each of which was “target housing” as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17):

- A. 9816 Holly Street (constructed in approximately 1952);
- B. 452 East 81st Street (constructed in approximately 1957); and
- C. 10905 Lydia Avenue (constructed in approximately 1967).

5. The regulation at 40 C.F.R. § 745.81(a)(2)(ii) prohibits firms from performing, offering, or claiming to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities on or after April 22, 2010.

6. Respondent, as a firm which performs, offers, or claims to perform renovations for compensation on housing constructed prior to 1978, is required to obtain firm certification from EPA. The EPA inspection revealed that Respondent failed to obtain initial firm certification from EPA to perform renovations, in violation of 40 C.F.R. §§ 745.89(a)(1) and 745.81(a)(2)(ii).

7. The regulation at 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the RRP Rule for a period of 3 years following completion of the renovation.

8. Between June 2019 and May 2021, Respondent performed four renovation projects on the Properties. The EPA inspection revealed that Respondent failed to prepare and retain records of each of these renovation projects, as required by 40 C.F.R. §§ 745.86(a) and 745.86(b)(6). Respondent therefore violated Section 409 of TSCA, 15 U.S.C. § 2689.

9. The regulation at 40 C.F.R. § 745.84(a)(1) requires that firms performing renovations in any residential dwelling unit of target housing must, no more than sixty (60) days before beginning renovation activities, provide the owner with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* and either obtain the owner's written acknowledgment that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation.

10. For each renovation of the Properties, Respondent failed to obtain either owner acknowledgement of receipt of the pamphlet or a certificate of mailing, as required by 40 C.F.R. § 745.84(a)(1)(i)-(ii). Respondent therefore violated Section 409 of TSCA, 15 U.S.C. § 2689.

11. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). After considering these factors, EPA has determined, and Respondent agrees, that settlement of this matter for a civil penalty of \$1,800 (One Thousand Eight Hundred dollars) is in the public interest.

12. Not more than thirty (30) calendar days after the effective date of the Final Order, Respondent shall deposit the civil penalty amount listed in Paragraph 11 by one of the following methods:

- A. Make electronic payment (Vendor Express, Fedwire, Pay.gov) at <http://www.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).
- B. Send a cashier's or certified check or money order with a notation for Docket No. TSCA-07-2022-0098, payable to the order of the "Treasury of the United States of America," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-07-2022-0098
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

- C. Send a cashier's or certified check or money order by an overnight/common carrier (*e.g.*, FedEx® or United Parcel Service of America, Inc.) with a notation for Docket No. TSCA-07-2022-0098 payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101.

13. Concurrently with Paragraph 12, Respondent shall forward a copy of the cashier's or certified check or money order or documentation of a wire transfer to the following addresses:

Mary Woodruff
woodruff.mary@epa.gov

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov

By written notice to Respondent, EPA may change the address and/or person listed above.

14. EPA is authorized to enter into this Expedited Settlement Agreement ("Agreement"), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded pursuant to Section 16 of TSCA and 40 C.F.R. § 22.13(b).

15. In signing this Agreement, Respondent: (a) admits that it is subject to TSCA and its implementing regulations; (b) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any and all remedies, claims for relief and other available rights to judicial or administrative review Respondent may have with respect to any issue of fact or law set forth in this Agreement and Final Order, including the opportunity for a hearing or appeal pursuant to TSCA and 40 C.F.R. Part 22 and any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

16. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) has corrected the alleged violations and is in compliance with Section 402 of TSCA,

15 U.S.C. § 2682, and its implementing regulations at 40 C.F.R. Part 745; (b) agrees to provide payment of the civil penalty set forth in Paragraph 11; (c) agrees to submit a true and accurate proof of payment of said civil penalty as set forth in Paragraph 12; and (d) agrees to release said payment to EPA upon entry of the Final Order attached hereto.

17. Upon the effective date of this Agreement and subsequent payment of the civil penalty as set forth in Paragraph 11, Respondent shall only be resolved of liability for federal civil penalties for the violations and facts alleged herein.

18. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

19. This Agreement does not affect the rights of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. EPA reserves its rights to take enforcement action for any other violations by Respondent of TSCA, any other federal statute or regulation, or this Agreement.

20. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection of the amount due plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.

21. Each party shall bear its own costs and fees, if any.

22. This Agreement, authorized by EPA's execution of the Final Order attached hereto, constitutes a final order under 40 C.F.R. Part 22.

23. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing.

24. Respondent consents to receiving the filed Agreement electronically at the following e-mail address: *taylor@nextgenkc.com*. Respondent understands that the Expedited Settlement Agreement and Final Order will become publicly available upon filing.

FOR THE RESPONDENT:

Name (print): Taylor Foley

Title (print): Owner

Signature: Taylor Foley

Date: 8 / 19 / 2022

FOR THE COMPLAINANT:

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Date: _____

Jared Pessetto
Attorney-Adviser
Office of Regional Counsel

Date: _____

FINAL ORDER

Pursuant to the authority of Section 16 of Toxic Substances Control Act, 15 U.S.C. § 2615, and according to the terms of this Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall comply with all terms of the Expedited Settlement Agreement;
2. Respondent is assessed a civil penalty of \$1,800 (One Thousand Eight Hundred dollars);
and
3. Respondent shall, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, make payment via a certified or cashier's check or money order or through a wire transfer as described in the Expedited Settlement Agreement.

This Agreement shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Date: _____

CERTIFICATE OF SERVICE
To be completed by EPA

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order, EPA Docket No. TSCA-07-2022-0098, was sent this day in the following manner to the following addressees:

Copy via e-mail to Complainant:

Jared Pessetto, Office of Regional Counsel
Pessetto.Jared@epa.gov

Mary Woodruff, Enforcement and Compliance Assurance Division
Woodruff.Mary@epa.gov

Copy via e-mail to Respondent:

Taylor Foley
NextGen Remodeling LLC
taylor@nextgenkc.com

Copy via e-mail to the State of Missouri:

Tyler Bax
Program Manager
Missouri Department of Health and Senior Services
Tyler.Bax@health.mo.gov

Dated this _____ day of _____, _____.
