

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

BEFORE THE ADMINISTRATOR

In the Matter of: )  
 )  
KCI, LLC ) Docket No. TSCA-07-2022-0017  
 )  
Respondent )  
 )

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant) and KCI, LLC a/k/a Kittleson Contracting (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 409 of the TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of the EPA.
4. Respondent is KCI, LLC, a/k/a Kittleson Construction, a limited liability company organized in Iowa and located at 1326 Main Street, Osage, Iowa 50461.

### **Statutory and Regulatory Background**

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required the EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745 Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract.

6. The regulation at 40 C.F.R. § 745.118(e) provides that failure or refusal to comply with 40 C.F.R. § 745.107 (disclosure requirements for sellers and lessors), 40 C.F.R. § 745.110 (opportunity to conduct an evaluation), 40 C.F.R. § 745.113 (certification and acknowledgment of disclosure), or 40 C.F.R. § 745.115 (agent responsibilities), is a violation of 42 U.S.C. § 4852d(b)(5) and of Section 409 of TSCA, 15 U.S.C. § 2689. 42 U.S.C. § 4852d(b)(5) provides that it shall be a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689 for any person to fail or refuse to comply with any rule issued under 42 U.S.C. § 4852d. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart F.

7. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), authorizes the EPA Administrator to assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which limited penalties assessed for violations of 42 U.S.C. § 4852d(b)(5), assessed under Section 16 of TSCA, 15 U.S.C. § 2615, to not more than \$10,000 per violation. Each day that such a violation continues constitutes a separate violation of Section 409. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note, Pub. L. 114-74, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$18,149 for violations that occurred after November 2, 2015, and for which penalties are assessed before December 23, 2020.

### **General Factual Allegations**

8. On or about June 27, 2019, the Iowa Department of Public Health (IDPH) conducted an inspection of 329 Chase Street, Osage, IA to determine the presence of lead-based

paint and lead based paint hazards. IDPH found that lead-based paint and lead based paint hazards were present in common areas of the apartment building.

9. On or about July 8, 2019, IPDH claims to have sent the inspection report and its findings from the June 27, 2019, inspection to Respondent.

10. On or about December 19, 2019, EPA attempted a records inspection at the office of KCI, LLC and was denied access to records.

11. Respondent is and at all times referred to herein was a “person” within the meaning of the TSCA.

12. Respondent is the “lessor” as defined by 40 C.F.R. § 745.103, for the leases of 329 Chase Street, Osage, IA and all other units at that apartment complex. (the Property).

13. The Property was constructed before 1978.

14. The Property is “target housing” as defined by 40 C.F.R. § 745.103.

#### **Allegations of Violation**

15. The Complainant hereby states and alleges that Respondent has violated the TSCA and federal regulations promulgated thereunder, as follows:

#### **Count 1**

16. The facts stated in Paragraphs 8 through 14 above are herein incorporated.

17. Pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, EPA may inspect any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to subchapter IV are manufactured, processed, stored, or held. An inspection conducted shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances, mixtures, or products subject to subchapter IV within such premises or conveyance have been complied with.

18. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to fail or refuse to permit entry or inspection as required by 15 U.S.C. § 2610.

19. On December 19, 2019, EPA attempted to inspect records of leases and lead-based paint disclosure forms. Respondent refused to allow EPA access to any records.

20. Respondent’s denial of EPA’s inspection is a violation of Section 11 of TSCA, 15 U.S.C. § 2610 and is unlawful under Section 15 of TSCA, 15 U.S.C. § 2614, and thus Respondent is subject to civil penalties under Section 16 of the TSCA, 15 U.S.C. § 2615.

**Consent Agreement**

21. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),  
Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) admits to the facts stipulated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

22. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

23. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

24. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *sales@kittlesoncontracting.com*.

**Penalty Payment**

25. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of twelve thousand, seven hundred and four dollars and thirty cents (\$12,704.30) as set forth below.

26. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

27. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
*R7\_Hearing\_Clerk\_Filings@epa.gov*; and

Katherine Kacsur, Attorney  
*kacsur.katherine@epa.gov*.

28. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

#### **Effect of Settlement and Reservation of Rights**

29. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of TSCA or any other applicable law.

30. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

31. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of TSCA and its implementing regulations, including all requirements of 40 C.F.R. Part 745.

32. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

33. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

34. This CAFO constitutes a “prior such violation” as that term is used in EPA’s Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to determine Respondent’s “history of prior such violations” under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

### **General Provisions**

35. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

36. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order 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.

37. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

38. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent’s agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**  
**KCI, LLC d/b/a Kittleson Contracting**

Date: 5-20-22

By: 

Print Name: Ryan Kittleson

Title: \_\_\_\_\_

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Candace Bednar  
Chemical Branch Chief  
Enforcement and Compliance Assurance Division

Date: \_\_\_\_\_

By: \_\_\_\_\_

Katherine Kacsur  
Office of Regional Counsel



**FINAL ORDER**

Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

*kacsur.katherine@epa.gov*

Copy via Email to Respondent:

*sales@kittlesoncontracting.com*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signed