



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN - 7 2018

REPLY TO THE ATTENTION OF:

LC-17J

CERTIFIED MAIL 7014 2870 0001 9577 6985
RETURNED RECEIPT REQUESTED

Mr. Jack Tilka
President
Jack's Wholesale Windows and Design of Schoolcraft, Inc.
11830 Shaver Road
Schoolcraft, Michigan 49087

Consent Agreement and Final Order – In the Matter of:
Jack's Wholesale Windows and Design of Schoolcraft, Inc.
Docket No. TSCA-05-2018-0006

Dear Mr. Tilka:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 7, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,236 is to be paid in the manner described in paragraphs 53 and 54. Please be certain that the docket number is written on the transmittal letter. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Saldivar".

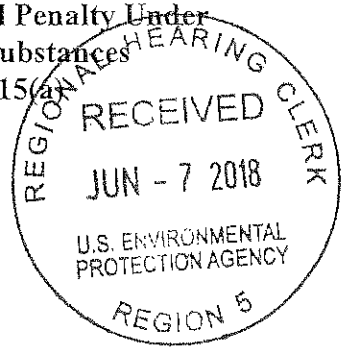
Christina Saldivar
Pesticides and Toxics Compliance Section

Enclosure

cc: Christopher Grubb, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2018-0006
)
Jack's Wholesale Windows and Design of) Proceeding to Assess a Civil Penalty Under
Schoolcraft, Inc.) Section 16(a) of the Toxic Substances
Schoolcraft, Michigan) Control Act, 15 U.S.C. § 2615(a)
)
Respondent.)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (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 (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Jack's Wholesale Windows and Design of Schoolcraft, Inc., a corporation with a place of business located at 11830 Shaver Road, Schoolcraft, Michigan 49087.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional and factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Pub. L. 102-550, 106 Stat. 3897 (codified throughout sections of 15 U.S.C. and 42 U.S.C.), Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

10. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 *et seq.*, by adding Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Section 402(a) of TSCA, 15 U.S.C. § 2682(a), required the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified; and that such regulations contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

12. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), required the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing and public buildings built before 1978, and commercial buildings, and to revise the regulations under Section 402(a) of TSCA to apply those regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.

13. Section 407 of TSCA, 15 U.S.C. § 2687, required the regulations promulgated by the Administrator under Subchapter IV to include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681-2692.

14. Pursuant to 402(a) of TSCA, 15 U.S.C. § 2682(a), EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, Lead-Based Paint Activities, prescribing procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities.

15. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682, EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, residential property renovations, prescribing procedures and requirements for the accreditation of training programs, certification of individuals and firms, work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities, titled Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule).

16. Under 40 C.F.R. Part 745, Subpart E, any firm that performs, offers, or claims to perform renovations of target housing or a child-occupied facility after April 22, 2010, must be certified by EPA.

17. Under 40 C.F.R. Part 745, Subpart E, each person who performs for compensation, a renovation of target housing or a child occupied facility must be trained and certified by an EPA accredited training provider to conduct renovation, remodeling and/or painting activities in target housing and/or child-occupied facilities; must be employed by an EPA-certified renovation firm and must comply with the specified work practice and recordkeeping requirements of the RRP Rule by April 22, 2010.

18. 40 C.F.R. § 745.83 defines *firm* to mean a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

19. 40 C.F.R. § 745.83 defines *renovation* to mean 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 by this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted

surfaces or painted components (*e.g.*, modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (*e.g.*, walls, ceiling, plumbing, windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

20. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA authorized State or Tribal Program.

21. 40 C.F.R. § 745.103 defines *residential dwelling* to mean a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

22. 40 C.F.R. § 745.103 defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

23. Under Section 409 of TSCA, 15 U.S.C. § 2689, it shall be unlawful for any person to fail or refuse to comply with any rule or order issued under Subchapter IV – Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692. *See also* 40 C.F.R. § 754.87.

24. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per violation for each day of violation of Section 409 of TSCA, 42 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$38,892 for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018.

General Allegations

25. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph.

26. At all times relevant to this CAFO, Respondent was a corporation registered in the State of Michigan, and therefore was/is a *firm* as defined by 40 C.F.R. § 745.83.

27. Respondent performed or directed workers in 59 contracted renovations at residential housing located in the States of Illinois, Indiana, and Michigan from January 2, 2017 to August 31, 2017. The housing addressed above is residential housing.

28. The 59 contracted renovations that Respondent performed or directed at the residential housing were modifications of the buildings' existing structures that resulted in disturbance of painted surfaces, and were therefore *renovations* as defined in 40 C.F.R. § 745.83.

29. The 59 renovations were each performed at residential housing built prior to 1978, and therefore the residential housing was *target housing* as defined in 40 C.F.R. § 745.103.

**Counts I & II - Failure to Ensure that All Individuals Performing Renovation Activities
Are Either Certified Renovators or Have Been Trained by a Certified Renovator**

30. Complainant incorporates paragraphs 1 through 29 of this CAFO as if set forth in this paragraph.

31. 40 C.F.R. § 745.89(d)(1) requires that firms must ensure that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

32. One individual, Tom Rodgers, performed 20 of the 59 renovations on behalf of Respondent's firm.

33. Tom Rodgers' renovator certification expired on April 23, 2015, and he was not a certified renovator in 2017.

34. Respondent failed to ensure that Tom Rodgers, who performed renovation activities on behalf of Respondent's firm, was either a certified renovator or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

35. Another individual, CB Pennock, performed 4 of the 59 renovations on behalf of Respondent's firm.

36. CB Pennock received his initial renovator certification on June 22, 2017.

37. CB Pennock performed one of the renovations on behalf of Respondent's firm on or around April 12, 2017, which was prior to CB Pennock's initial renovator certification.

38. Respondent failed to ensure that CB Pennock, who performed renovation activities on behalf of Respondent's firm, was either a certified renovator or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

39. Respondent's failure to ensure that Tom Rodgers and CB Pennock were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90 each constitute a violation of 40 C.F.R. § 745.89(d)(1), and Section 409 of TSCA, 15 U.S.C § 2689.

Count III – Failure to Ensure that a Certified Renovator is Assigned to Each Renovation

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

41. 40 C.F.R. § 745.89(d)(2) requires that firms must assign a certified renovator to each renovation performed by the firm and that the certified renovator discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

42. For 21 renovations performed by Tom Rodgers and CB Pennock on behalf of Respondent's firm, Respondent failed to ensure that a certified renovator was assigned to the renovations performed by the firm, and failed to ensure that a certified renovator discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

43. Respondent's failure to ensure that a certified renovator was assigned to 21 out of the 59 renovations, constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count IV – Failure to Retain Records Necessary to Demonstrate Compliance

44. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

45. 40 C.F.R. § 745.86(a) requires that firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

46. Records that must be retained pursuant to 40 C.F.R. § 745.86(a) include records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used. 40 C.F.R. § 745.86(b)(1)(ii).

47. In all 59 renovations, Respondent failed to retain records prepared by a certified renovator after using an EPA-recognized test kit that identified the manufacturer and model of the test kit used, as well as a description of the components that were tested including their locations as required by 40 C.F.R. § 745.86(b)(1)(ii).

48. 40 C.F.R. § 745.86(b)(6) requires a firm to document compliance with the work practice standards in 40 C.F.R. § 745.85 by retaining records to document that a certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a)

49. In at least 21 instances, Respondent failed to retain records to document that a certified renovator performed or directed workers who performed all of the work practice standards described in 40 C.F.R. § 745.85(a).

50. Therefore, Respondent failed to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of all renovations in calendar year 2017.

51. Respondent's failure to retain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following the completion of all renovations in calendar year 2017, constitutes as a violation of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C § 2689.

Civil Penalty

52. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$10,236. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered 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*, dated August 19, 2010.

53. Within 30 days after the effective date of this CAFO, Respondent must pay the \$10,236 civil penalty for the TSCA violations by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

54. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Christina Saldivar (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Christopher Grubb (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

55. This civil penalty is not deductible for federal tax purposes.

56. If Respondent does not timely pay the civil penalty, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

57. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following interest, fees, and penalties on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

58. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following valid email addresses: grubb.christopher@epa.gov (for Complainant), and connie@jackswholesalewindows.com (for Respondent). See 40 C.F.R. ' § 22.5-22.6.

59. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

60. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

61. This CAFO does not affect Respondent's responsibility to comply with TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, or local laws and permits.

62. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.

63. The terms of this CAFO bind Respondent and its successors and assigns.

64. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

65. Each party agrees to bear its own costs and attorney's fees in this action.

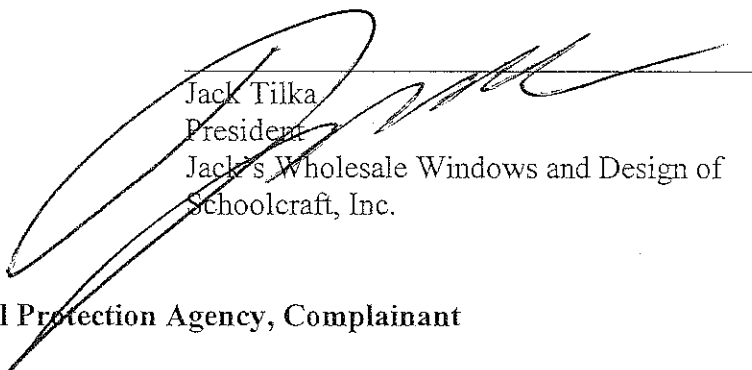
66. This CAFO constitutes the entire agreement between the parties.

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67. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

Jack's Wholesale Windows and Design of Schoolcraft, Inc., Respondent

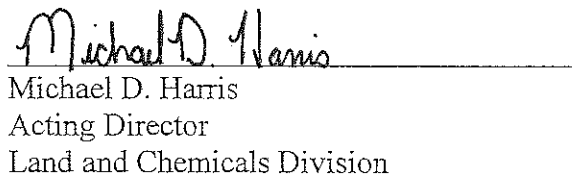
5-15-18
Date



Jack Tilka
President
Jack's Wholesale Windows and Design of
Schoolcraft, Inc.

United States Environmental Protection Agency, Complainant

6/04/2018
Date



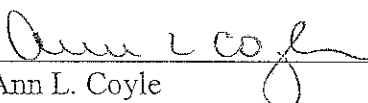
Michael D. Harris
Acting Director
Land and Chemicals Division

In the Matter of Jack's Wholesale Windows and Design of Schoolcraft, Inc.
Docket No. TSCA-05-2018-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

June 6, 2018
Date



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the matter of: Jack's Wholesale Windows & Design of Schoolcraft, Inc.

Docket Number: **TSCA-05-2018-0006**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on June 7, 2018, in the following manner to the following addressees:

Copy by E-mail to Respondent: Jack's Wholesale Windows & Design of Schoolcraft, Inc.
connie@jackswholesalewindows.com

Copy by E-mail to
Attorney for Complainant: Christopher Grubb
grubb.christopher@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: June 7, 2018



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5