



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
DEC - 8 2017

REPLY TO THE ATTENTION OF:

LC-17J

Mr. John Ockert  
President  
DJ's Interior Specialties, Inc.  
6505 Rahe Road  
Kingsley, Michigan 49649

Consent Agreement and Final Order In the Matter of:  
DJ's Interior Specialties, Inc. **TSCA-05-2018-0001**

Dear Mr. Ockert:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in Resolution of the above case. This document was filed on December 8, 2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$980.00 is to be paid in the manner described in paragraphs 33 and 34. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace  
Pesticides and Toxic Compliance Section  
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No. TSCA-05-2018-0001
	)	
DJ's Interior Specialties, Inc.	)	
Kingsley, Michigan	)	Proceeding to Assess a Civil Penalty
	)	Under Section 16(a) of the Toxic Substances
	)	Control Act, 15 U.S.C. § 2615(a)
Respondent	)	
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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, by lawful delegation, the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. Respondent is DJ's Interior Specialties, Inc., located at 6505 Rahe Road, Kingsley, Michigan.
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). 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 assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the general 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, at 42 U.S.C. § 4851 *et seq.*, 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 by adding Subchapter IV – Lead Exposure Reduction. Section 406(b) of TSCA, 15 U.S.C. § 2686, required the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

11. Section 407 of TSCA, 15 U.S.C. § 2687, required that the regulations promulgated by the Administrator include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV.

12. On June 1, 1998, EPA promulgated, pursuant to 15 U.S.C. §§ 2686 and 2687, regulations codified at 40 C.F.R. Part 745, Subpart E, which was subsequently amended on April 22, 2008.

13. Federal regulations at 40 C.F.R. § 745.83 define *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.

14. Federal regulations at 40 C.F.R. § 745.83 define *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, ceilings, 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.

15. Federal regulations at 40 C.F.R. § 745.103 define *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.

16. Federal regulations at 40 C.F.R. § 745.103 define *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.

17. Federal regulations at 40 C.F.R. § 745.81(a)(2)(ii) require that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations in target housing or child occupied facilities without certification from EPA under 40 C.F.R. § 745.89 unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

18. Federal regulations at 40 C.F.R. § 745.85(a)(2)(ii)(C) requires the renovator, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

19. Under Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or refuse to comply with Sections 406 and 407 of TSCA, 15 U.S.C. §§ 2686, 2687, or any rule or order issued thereunder.

20. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d) authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Each day that such a violation continues constitutes a separate

violation of Section 409 of TSCA. 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 \$37,500 for violations that occurred after January 12, 2009.

### General Allegations

21. During calendar year 2013, Respondent was a corporation under the laws of the State of Michigan.

22. During 2013, Respondent was a firm, as defined by 40 C.F.R. § 745.83.

23. During 2013, Respondent, for compensation, performed, or directed workers who performed, modifications of existing structures that resulted in disturbances of painted surfaces as detailed in this paragraph.

Property Address	Year Built	Renovation Activities	Date of Contract
512 West Seventh Avenue Traverse City, Michigan	1902	Exterior Renovation	November 19, 2012

24. The property listed in paragraph 23 was a residential dwelling, as defined at 40 C.F.R. § 745.103.

25. The residential dwelling listed in paragraph 23 was built prior to 1978.

26. The residential dwelling listed in paragraph 23 was target housing, as defined at 40 C.F.R. § 745.103.

27. In performing the work identified in paragraph 23, Respondent disturbed and removed interior painted surfaces.

28. The work identified in paragraph 23 was a renovation, as defined at 40 C.F.R. § 745.83.

### Alleged Violations

29. Count 1: Respondent performed, offered, or claimed to perform a renovation at 512 West Seventh Avenue, Traverse City, Michigan, but failed to first obtain from EPA the certification required by 40 C.F.R. § 745.89, in violation of 40 C.F.R. § 745.81(a)(2)(ii).

30. Count 2: Before beginning the renovation described in paragraph 29, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering required by 40 C.F.R. § 745.89, in violation of 40 C.F.R. § 745.85(a)(2)(ii)(C).

31. Respondent's actions described in paragraphs 29-30 constitute two separate violations of 40 C.F.R. Part 745 and 15 U.S.C. § 2689.

### Civil Penalty

32. 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 \$980.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation or 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.

33. Respondent must pay a \$980 civil penalty, plus interest, in three installments as follows: \$327.00 within 30 days of the effective date of this CAFO; \$327.54 within 60 days of

the effective date of this CAFO; and \$326.27 within 90 days of the effective date of this CAFO.

Respondent must pay the installments by sending a cashier's or certified check, payable to

"Treasurer, United States of America," to:

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

Each check must state "In the Matter of DJ's Interior Specialties, Inc." and the Docket Number of this CAFO.

34. A transmittal letter stating Respondent's Name, Address, Case Title, Case Docket Number and the Billing Document Number must accompany each payment. Respondent must send a copy of each check and transmittal letter to:

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

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

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

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

36. If Respondent does not pay timely any installment payment as set forth in paragraph 33, the entire unpaid balance of the civil penalty shall become due and owing upon written notice



by EPA to Respondent of the delinquency. 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). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

37. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following 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**

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

39. 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.

40. This CAFO does not affect Respondent's responsibility to comply with TSCA, regulations promulgated thereunder, and other applicable federal, state, and local laws.

41. Respondent certifies that it is complying with TSCA and regulations promulgated thereunder.

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

43. Each person signing this agreement 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.

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

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

DJ's Interior Specialties, Inc., Respondent

11-9-17  
Date

John Ockert  
John Ockert  
v. President  
DJ's Interior Specialties, Inc.

United States Environmental Protection Agency, Complainant

12/06/2017  
Date

Michael D. Harris  
Brigid Lowery  
Acting Division Director  
Land and Chemicals Division

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.

December 7 2017  
Date

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

In the matter of: DJ's Interior Specialties, Inc.  
Docket Number: TSCA-05-2018-0001

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 December 8, 2017, in the following manner to the addressees:

Copy by Certified Mail  
Return-receipt:

John Ockert  
DJ's Interior Specialties, Inc.  
6505 Rahe Road  
Kingsley, Michigan 49649

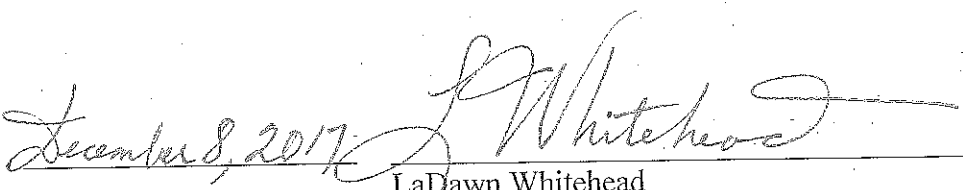
Copy by E-mail to  
Attorney for Complainant:

James Morris  
morris.james@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: December 8, 2017

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7009 1680 0000 7662 7139