

2017-03-27 11:50

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	
MJM Enterprises, Inc.)	
1 Randall Avenue)	
Baltimore, MD 21208)	Docket No.: TSCA-03-2017-0177
)	
d/b/a)	
)	Proceeding Under Sections 16(a) and
Baltimore Paint Authority)	409 of the Toxic Substances Control
)	Act, 15 U.S.C. §§ 2615(a) and 2689
RESPONDENT.)	

CONSENT AGREEMENT

This Consent Agreement is entered into by the Acting Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and MJM Enterprises, Inc. (“MJM Enterprises” or “Respondent”), pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondent’s alleged failure, during the performance of six (6) renovations for compensation on certain pre-1978 housing, to comply with the Lead Renovation, Repair, and Painting Program (commonly known as the “RRP Rule”), set forth and codified by EPA at 40 C.F.R. Part 745, Subpart E.
2. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections IV and V of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, immediately above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. 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 *Subchapter IV – Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.
12. Section 402(c) of TSCA, 15 U.S.C § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings.
13. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such record keeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV.
14. Under the RRP Rule, 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 or must be employed by an EPA-certified renovation firm.

15. Pursuant to 40 C.F.R. § 745.83, the term “firm” means “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.”
16. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means “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 40 C.F.R. § 745.223.”
17. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term “target housing” means “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.”
18. Respondent, d/b/a Baltimore Paint Authority, is a Maryland corporation that specializes in the performance of residential and commercial interior and exterior painting, drywall work, plaster removal, pressure washing and other related activities in the Baltimore, Maryland area. Respondent does business from an office located at 1 Randall Avenue, Baltimore, MD 21208.
19. The “residential dwellings” located at 22 S. Collington Ave.; 7936 Winterset Ave.; 212 Longwood Rd.; 701 Berry Street; 2101 Burdock Rd.; and 6604 Troy Ct., in Baltimore, Maryland, were each constructed prior to 1978 and were each “target housing” as that term is defined at 40 C.F.R. § 745.103, at all times herein relevant.
20. Respondent is and was, at all times herein relevant, a “person” and a “firm,” that performed “renovation” (as those terms are defined at 40 C.F.R. § 745.83) activities at each of the six (6) target housing properties located at the addresses identified in the preceding paragraph between the period of June 1, 2015 and May 30, 2016, respectively, as further described immediately below:

<u>Address</u>	<u>Square Feet of Paint Disturbed</u>	<u>Renovation Start Date</u>	<u>Contract Description of Renovation Work Performed</u>
22 S. Collington	120 (exterior)	~ 7/20/2015	Prep work (including scraping, sanding, caulking, and spot priming) and paint exterior front cornice.
7936 Winterset	400 (interior)	~ 6/6/2015	Prep work (including wallpaper and bookshelf removal, spackling, scraping, sanding, caulking, and spot priming) and paint ceiling, walls, trim and doors.

- | | | | |
|---------------|-----------------|-------------|---|
| 212 Longwood | 600-700 (int.) | ≈ 3/23/2016 | Prep work (including wallpaper removal, plaster repair, spackling, scraping, sanding and priming) and paint ceilings, walls, trim and doors in 2 rooms and 1 bathroom. |
| 701 Berry St. | 1200 (exterior) | ≈ 4/4/2016 | Prep. work (including scraping, sanding, priming and caulking) and paint exterior painted surfaces on two sides and rear of house. |
| 2101 Burdock | 400 (interior) | ≈ 4/11/2016 | Prep work (including spackling, scraping, sanding, caulking, and priming) and paint walls, trim, and doors in basement office/out cove. |
| 6604 Troy Ct. | 500 (interior) | ≈ 5/9/2016 | Prep work (including wallpaper removal, spackling, scraping, sanding, caulking, and priming) and paint ceilings, walls, trim, and doors in 2 bedrooms and one 1 bathroom. |
21. Respondent entered into contracts with each of the owners of residential dwellings located at the addresses identified in paragraph 19, above, for the purpose of performing a “renovation for compensation,” pursuant to 40 C.F.R. § 745.82(a), at each such target housing property.
22. The “renovation performed for compensation” by the Respondent at each of the six (6) target housing properties identified and referenced in paragraphs 19 through 21, above, did not involve a renovation in any target housing or in any child-occupied facility in which:
- (1) “a written determination ha[d] been made by an inspector or risk assessor ... that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(1);
 - (2) “a certified renovator, using an EPA recognized test kit . . ., has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(2); or
 - (3) “a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA . . . has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter . . .,” as provided at 40 C.F.R. § 745.82(a)(3).
23. On June 2, 2016, EPA received a referral of potential RRP Rule violations from the Maryland Department of the Environment (“MDE”). MDE referred the matter to EPA based upon work practice observations made by MDE inspectors during site visits performed at the target housing property located at 701 Berry Street, Baltimore, Maryland on May 26, 2016 and on May 27, 2016, where workers for a firm which they

identified to the MDE inspectors as the “Baltimore Paint Authority” were then performing renovation and painting activities, and after a subsequent June 1, 2016 site visit to the same target housing property led the MDE inspectors to conclude that all renovation and painting activities had then appeared to have concluded.

24. On July 14, 2016, two duly-authorized EPA inspectors (hereinafter, “EPA Inspectors”) interviewed the Respondent’s President, and conducted an inspection of Respondent’s business records (hereinafter “EPA Records Review”), including a random selection of six (6) target housing renovation contracts, which the EPA Inspectors reviewed in order to determine Respondent’s level of compliance with applicable RRP Rule requirements during the renovation activities that it performed at each of those six target housing properties.

V. VIOLATIONS ALLEGED

COUNT I

Performing Target Housing Renovations for Compensation Without First Obtaining Required Firm Certification

25. The allegations contained in Paragraphs 1 through 24 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
26. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA, under 40 C.F.R. § 745.89, in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).
27. On or about July 20, 2015 (at 22 S. Collington Ave.); June 6, 2015 (at 7936 Winterset Ave.); March 23, 2016 (at 212 Longwood Rd.); April 4, 2016 (at 701 Berry Street); April 11, 2016 (at 2101 Burdock Rd.); and May 9, 2016 (at 6604 Troy Ct.), Respondent performed target housing renovations in Baltimore, Maryland, which did not qualify for any of the exceptions identified in 40 C.F.R. § 745.82(a) or (c), respectively, without first having obtained initial lead-safe firm certification pursuant to the requirements and provisions set forth at 40 C.F.R. § 745.89.
28. Respondent’s performance of target housing renovations after April 22, 2010, without first obtaining the required initial lead-safe firm certification from EPA pursuant to 40 C.F.R. § 745.89 requirements, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.81(a)(2)(ii).
29. Respondent’s failure to comply with 40 C.F.R. § 745.81(a)(2)(ii) by its performance of target housing renovations after April 22, 2010, without first having obtaining a required 40 C.F.R. § 745.89 initial lead-safe firm certification from EPA, constitutes a violation of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS II - IV

*Failing to Ensure that all Individuals Performing
Target Housing Renovation Activities on Behalf of the Firm
Were Either Certified Renovators, or had been Trained by a Certified Renovator,
and that They Properly Discharged all Certified Renovator Responsibilities*

30. The allegations contained in Paragraphs 1 through 29 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
31. Pursuant to 40 C.F.R. §§ 745.89(d)(1) and (2), “[f]irms performing renovations must ensure that: (1) 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 [; and] (2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.”
32. Pursuant to 40 C.F.R. §§ 745.90(a)(1), “[t]o become a certified renovator . . . , an individual must successfully complete the appropriate course accredited by EPA under [40 C.F.R.] § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part [745] . . .”,
33. Pursuant to 40 C.F.R. §§ 745.90(a)(4), “[t]o maintain renovator certification . . . , an individual must complete a renovator . . . refresher course accredited by EPA under [40 C.F.R.] § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part [745] within 5 years of the date the individual completed the initial course described in [40 C.F.R. §§ 745.90] (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification.”
34. The President of MJM Enterprises completed an EPA accredited Lead Renovator Initial training course on March 31, 2010 and became a certified renovator on that date. However, he subsequently failed to maintain his renovator certification status beyond March 31, 2016 by failing to take a renovator refresher course, accredited by EPA pursuant to 40 C.F.R. § 745.90(a)(4) requirements, prior to that initial certification’s March 31, 2016 expiration date.
35. None of the individuals who performed renovation activities on behalf of Respondent at the 701 Berry Street, 2101 Burdock Rd. and 6604 Troy Ct., Baltimore, Maryland target housing properties on and after April 4, 2016, April 11, 2016 and May 9, 2016, respectively, were certified renovators, and none had been trained by a certified renovator, in accordance with 40 C.F.R. § 745.90 requirements.

36. Respondent failed to ensure that a certified renovator discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90 during the course of the 701 Berry Street, 2101 Burdock Rd. and 6604 Troy Ct., Baltimore, Maryland target housing property renovations initiated and performed on and after April 4, 2016, April 11, 2016 and May 9, 2016, respectively.
37. Respondent failed to comply with its firm responsibility to ensure that all individuals who performed renovation activities on its behalf at the 701 Berry Street, 2101 Burdock Rd. and 6604 Troy Ct., Baltimore, Maryland target housing properties on and after April 4, 2016, April 11, 2016 and May 9, 2016, respectively, were either certified renovators or had been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, in violation of the requirements set forth at 40 C.F.R. § 745.89(d)(1).
38. Respondent additionally failed to comply with its firm responsibility to ensure that a certified renovator was assigned to each of the 701 Berry Street, 2101 Burdock Rd. and 6604 Troy Ct., Baltimore, Maryland target housing property renovations, and discharged all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, in violation of the requirements set forth at 40 C.F.R. § 745.89(d)(2).
39. Respondent's failure to comply with 40 C.F.R. § 745.89(d)(1) and (2) requirements during each of the three (3) target housing renovations that it initiated on or about April 4, 2016, April 11, 2016 and May 9, 2016, as identified in the two preceding paragraphs, constitutes three (3) separate violations of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT V - X

*Failing to Obtain Timely Written Acknowledgment of Target Housing Owners'
Receipt of EPA-Approved Lead Hazard Information Pamphlets*

40. The allegations contained in Paragraphs 1 through 39 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
41. Pursuant to 40 C.F.R. § 745.84(a)(1), a firm performing a renovation in any residential dwelling unit of target housing must provide the owner of the unit with the EPA-approved lead hazard information pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*" within 60 days before beginning renovation activities and either: (i) obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or (ii) obtain a certificate of mailing at least 7 days prior to the renovation.
42. On July 14, 2016, during the EPA Records Review, the EPA Inspectors reviewed the business records maintained by Respondent which pertained to the renovation activities that Respondent performed at each of the six (6) target housing properties identified in paragraphs 19 and 20, above.

43. At the time of, and at all times after, the date of the EPA Records Review, Respondent has been unable to provide to the EPA Inspectors or to EPA any information or documentation to substantiate whether any owners of the residential dwelling target housing properties located at 22 S. Collington Ave.; 7936 Winterset Ave.; 212 Longwood Rd.; 701 Berry Street; 2101 Burdock Rd.; and 6604 Troy Ct., in Baltimore, Maryland, had been provided with, or had otherwise timely received, the required EPA-approved lead hazard information pamphlet entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” from the Respondent prior to the Respondent’s initiation and performance of the renovation activities identified in paragraph 20, above, from on or about July 20, 2015 through on or about June 30, 2016, at each of these six (6) respective target housing properties.
44. Respondent’s failure to obtain from each of these six (6) residential dwelling target housing property owners a written acknowledgment that each respective owner had timely received the required EPA-approved lead hazard information pamphlet entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” constitutes six (6) separate failures on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.84(a)(i).
45. The Respondent’s failure to comply with an applicable 40 C.F.R. § 745.81(a)(1)(i) requirement, by and through its failure to obtain from each of six (6) residential dwelling target housing property owners a written acknowledgment that they had each timely received the required EPA-approved lead hazard information pamphlet, constitutes six (6) separate violations of 40 C.F.R. §745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS XI - XVI

Failing to Make Available to EPA

*Required Documentation of Respondent’s Compliance With
the Requirements of Each Applicable Work Practice Standard*

46. The allegations contained in Paragraphs 1 through 45 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
47. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA, all records necessary to demonstrate compliance with the requirements of 40 C.F.R. § 745, Subpart E, for a period of 3 years following completion of the renovation.
48. Pursuant to 40 C.F.R. §745.86(b)(6), firms performing renovations must retain all records documenting compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed, or directed workers to perform, tasks described by 40 C.F.R. § 745.85(a), and followed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

49. At the time of the July 14, 2016 EPA Records Review, Respondent did not have any records available to document whether a certified renovator performed, or directed workers to perform the tasks required by 40 C.F.R. § 745.85(a), or to document whether Respondent followed the post-renovation cleaning verification standards described in 40 C.F.R. § 745.85(b), during the course of each of the target housing property renovations that Respondent performed, from on or about July 20, 2015 through on or about June 30, 2016, at the six (6) residential dwelling target housing properties identified in paragraphs 19 and 20, above.
50. Respondent's failure to retain and provide to EPA, upon request, records that Respondent is required to maintain in order to document its compliance with the work practice standards of 40 C.F.R. § 745.85, including documentation that a certified renovator performed, or directed workers to perform, tasks described by 40 C.F.R. § 745.85(a) and followed the post-renovation cleaning verification standards described in 40 C.F.R. § 745.85(b) during the course of the six (6) identified residential dwelling target housing property renovations that Respondent performed from on or about July 20, 2015 through on or about June 30, 2016, constitutes six (6) separate failures on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.86(b)(6).
51. Respondent's failure to comply with an applicable 40 C.F.R. § 745.86(a)(6) requirement through its failure to retain and provide to EPA, upon request, those records required to document compliance with the work practice standards of 40 C.F.R. § 745.85 during the course of the six (6) identified residential dwelling target housing property renovations identified and described in the preceding paragraph, constitutes six (6) separate violations of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT XVII

Failing to Post Required Warning Signs

52. The allegations contained in Paragraphs 1 through 51 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
53. 40 C.F.R. § 745.85(a)(1) provides, in relevant and applicable part, that “[f]irms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.”
54. On May 27, 2016, a date during which renovation activities were being performed by workers employed by the Respondent at the residential dwelling target housing property located at 701 Berry Street, Baltimore, Maryland, no lead work warning signs were posted to warn occupants and other persons not involved in renovation activities to remain outside of the work area during the time that target housing property renovation work was in progress.

55. Respondent's failure to post required lead work warning signs to properly warn occupants and other persons not involved in renovation activities to remain outside of the work area during the course of renovation and post-renovation cleaning verification activities conducted by Respondent on May 27, 2016 at the 701 Berry Street, Baltimore, Maryland target housing property, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.85(a)(1).
56. Respondent's May 27, 2016 failure to comply with an applicable 40 C.F.R. § 745.85(a)(1) requirement, by and through its failure to post required lead work warning signs designed to warn occupants and other persons not involved in the 701 Berry Street, Baltimore, Maryland target housing property renovation to remain outside of the work area during the course of renovation and post-renovation cleaning verification activities, constitutes a violation of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT XVIII

*Failing to Ensure that Waste Collected from
Renovation Activities was Properly Stored and Contained*

57. The allegations contained in Paragraphs 1 through 56 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
58. 40 C.F.R. § 745.85(a)(2)(ii) delineates the work practice containment requirements that renovation firms must employ when exterior renovation activities are being performed.
59. With respect to exterior renovations, 40 C.F.R. § 745.85(a)(2)(ii)(C) specifically provides, in relevant and applicable part and with an exception not herein applicable, that the renovation firm must "[c]over 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"
60. On May 27, 2016, a date during which renovation activities were being performed by workers employed by the Respondent at the residential dwelling target housing property located at 701 Berry Street, Baltimore, Maryland, workers employed by the Respondent had covered the ground around the perimeter of exterior building surfaces then undergoing renovation work with canvas tarps only, which did not extend 10 feet beyond the building perimeter or a sufficient distance to collect falling paint debris, as paint chips were present on the ground, beyond the covered areas, in the alley on the side of the target housing property where work was being performed.
61. Respondent's failure 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 while performing exterior renovation work at the residential target housing property located at 701 Berry Street,

Baltimore, Maryland on May 27, 2016, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.85(a)(2)(ii)(C).

62. Respondent's May 27, 2016 failure to comply with an applicable 40 C.F.R. § 745.85(a)(2)(ii)(C) requirement, by and through its failure 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 while performing exterior renovation work at the residential target housing property located at 701 Berry Street, Baltimore, Maryland, constitutes a violation of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

COUNT XIX

*Failing to Take Necessary Extra Precautions
to Properly Secure the Work Area*

63. The allegations contained in Paragraphs 1 through 62 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
64. With respect to exterior renovations, 40 C.F.R. § 745.85(a)(2)(ii)(D) specifically provides, in relevant and applicable part, that "[i]f the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties."
65. On May 27, 2016, during the performance of exterior renovation activities at the residential dwelling target housing property located at 701 Berry Street, Baltimore, Maryland, paint chips had migrated beyond the tarp-covered areas laid down by Respondent's workers and were present on the sidewalk, alley floor, and front steps of the neighboring property.
66. Respondent's failure to erect vertical containment or to take equivalent extra precautions in containing the exterior renovation work area in order to ensure that dust and debris from the renovation that its workers were then performing at the residential target housing property located 701 Berry Street, Baltimore, Maryland on May 27, 2016 did not contaminate adjacent buildings or migrate to adjacent properties, constitutes a failure on the part of the Respondent to comply with an applicable RRP Rule requirement of 40 C.F.R. § 745.85(a)(2)(ii)(D).
67. Respondent's May 27, 2016 failure to comply with an applicable 40 C.F.R. § 745.85(a)(2)(ii)(D) requirement, by and through its failure to erect vertical containment or to take equivalent extra precautions in containing the exterior renovation work area in order to ensure that dust and debris from the renovation that its workers were then performing at the residential target housing property located 701 Berry Street, Baltimore, Maryland did not contaminate adjacent buildings or migrate to adjacent properties,

constitutes a violation of 40 C.F.R. § 745.87(a) and of Section 409 of TSCA, 15 U.S.C. § 2689.

VI. CIVIL PENALTY

68. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Ten Thousand Eight Hundred and Twenty-Five Dollars (\$10,825.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire penalty of **Ten Thousand Eight Hundred and Twenty-Five Dollars (\$10,825.00)** within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
69. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent's, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule ("LBP Consolidated ERPP")*, dated August 2010, and the applicable March 5, 2017 EPA pilot *Lead-Based Paint Graduated Penalty Approach*, which applies to respondents with a demonstrated pre-tax (unadjusted) gross annual revenue of \$2,000,000 or less, or a net worth of \$600,000 or less, for RRP Rule settlements that are concluded in Fiscal Year 2017 (*i.e.*, on or before September 30, 2017). Pursuant to the 2017 Civil Monetary Penalty Inflation Adjustment Rule, published on January 12, 2017 and effective on January 15, 2017 (*see*, 82 Fed. Reg. 3633), Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19 and the applicable July 27, 2016 Memoranda by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*.
70. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2017-0177**;
 - b. All checks shall be made payable to "**United States Treasury**";

- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, 513-487-2091
Secondary Contact: Contact: Heather Russell, 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

71. Respondent may also pay the amount described in Paragraph 50 above, electronically or on-line as follows:

- a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
or Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

72. A copy of Respondent's check or a copy of Respondent's electronic transfer payment shall be sent simultaneously to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

and

A.J. D'Angelo
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

73. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the

conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

74. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
75. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
76. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

77. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under Section 16 of TSCA, 15 U.S.C. § 2615, for the specific violations alleged in Section V ("Violations Alleged"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

78. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

79. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that it currently is complying with applicable provisions of TSCA and 40 C.F.R. Part 745.

X. RESERVATION OF RIGHTS

80. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an

imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

81. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent's successors, agents and assigns.

XII. EFFECTIVE DATE

82. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

XIII. ENTIRE AGREEMENT

83. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

84. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

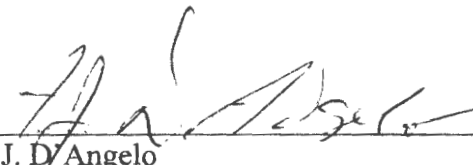
For Respondent:

Date: 7-11-2017

By: Michael Vardi
Mr. Michael Vardi, President
MJM Enterprises, Inc.


For Complainant:

Date: 7/12/2017

By: 
A.J. DiAngelo
Sr. Assistant Regional Counsel
UST, Asbestos, Lead & Pesticides Branch (3RC50)
U.S. Environmental Protection Agency, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 7/27/2017

By: 
Catherine A. Libertz, Acting Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2017-03-20 11:50

In the Matter of:)	
)	
MJM Enterprises, Inc.)	
1 Randall Avenue)	
Baltimore, MD 21208)	Docket No.: TSCA-03-2017-0177
)	
d/b/a)	
)	
Baltimore Paint Authority)	Proceeding Under Sections 16(a) and
)	409 of the Toxic Substances Control
)	Act, 15 U.S.C. §§ 2615(a) and 2689
RESPONDENT.)	

FINAL ORDER


Complainant, the Acting Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, MJM Enterprises, Inc., d/b/a Baltimore Paint Authority, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

WHEREFORE, pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615(a) and 2689, with respect to violations of the Residential Property Renovation requirements of 40 C.F.R. Part 745, Subpart E, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed

therein was based upon a consideration of, *inter alia*: the statutory penalty factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B); EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule ("LBP Consolidated ERPP")*, dated August 2010; the applicable and currently effective EPA pilot *Lead-Based Paint Graduated Penalty Approach*, issued on March 5, 2017; and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to the 2017 Civil Monetary Penalty Inflation Adjustment Rule, effective as of January 15, 2017 (*see*, 82 Fed. Reg. 3633; January 12, 2017), 40 C.F.R. Part 19, and the July 27, 2016 Memoranda by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*, **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of Ten Thousand Eight Hundred and Twenty-Five Dollars (\$10,825.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, or his designee, the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Aug. 2, 2017



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029


In the Matter of:)
)
MJM Enterprises, Inc.)
1 Randall Avenue)
Baltimore, MD 21208) Docket No.: TSCA-03-2017-0177
)
d/b/a)
) Proceeding Under Section 16(a) of the
Baltimore Paint Authority) Toxic Substances Control Act, 15
) U.S.C. §§ 2615(a) and 2689
RESPONDENT.)

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order (collectively, "CAFO"). I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid (Article No. 7001 2510 0001 1042 9153), to the following person at the following address:

Randall M. Lutz, Esq.
Saul Ewing, LLP
Lockwood Place
500 East Pratt Street, Suite 900
Baltimore, Maryland 21202-3171

8/2/2017
Date


A.J. D'Angelo
Sr. Assistant Regional Counsel
UST, Asbestos, Lead & Pesticides Branch
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480