

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2024-0010
)	
JMS Companies, LLC)	
d/b/a Choice Property Management)	Proceeding to Assess a Civil
Mishawaka, Indiana,)	Penalty Under Section 16(a) of the
)	Toxic Substances Control Act,
Respondent.)	15 U.S.C. § 2615(a)
)	
)	
)	

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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is JMS Companies, LLC d/b/a Choice Property Management, a limited liability company with a place of business located at 514 South West Street, Mishawaka, Indiana 46544.

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 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

Disclosure Rule

9. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Lead Act), 42 U.S.C. § 4852d, requires the Administrator of EPA to promulgate regulations for the disclosure of lead-based paint hazards in target housing that is offered for sale or lease.

10. On March 6, 1996, EPA promulgated regulations at 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 (Disclosure Rule) pursuant to 42 U.S.C. § 4852d.

11. 40 C.F.R. § 745.103 defines target housing as 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.

12. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

13. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including but not limited to individuals, partnerships,

corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

14. 40 C.F.R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

15. 40 C.F.R. § 745.113(b) requires that each contract to lease target housing include, as an attachment or within the contract, a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or the lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and, the signatures and dates of signature of the lessor, agent, and lessee certifying the accuracy of their statements.

16. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f).

17. Under 42 U.S.C. § 4852d(b)(5), 15 U.S.C. § 2615(a), and 40 C.F.R. Part 19, the Administrator of EPA may assess a civil administrative penalty of up to \$21,018 for each violation of 42 U.S.C. § 4852d and Section 409 of TSCA, 15 U.S.C. § 2689, that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

18. 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.

Renovation, Repair and Painting Rule

19. Section 402(a) of TSCA, 15 U.S.C. § 2682, requires 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; 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.

20. Section 402(c) of TSCA, 15 U.S.C. § 2682, requires 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.

21. Section 406(b) of TSCA, 15 U.S.C. § 2686(b), requires 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.

22. Section 407 of TSCA, 15 U.S.C. § 2687, requires the regulations promulgated by the Administrator of EPA under Subchapter IV to include such recordkeeping and reporting

requirements as may be necessary to ensure the effective implementation of the TSCA Lead Exposure Reduction requirements, 15 U.S.C. §§ 2681 through 2692.

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. § 745.87.

24. Under Section 15 of TSCA, 15 U.S.C. § 2614, it shall be unlawful for any person to fail or refuse to establish and maintain records, submit reports, notices, or other information, or permit access to or copying of records, as required by TSCA or a rule thereunder. *See also* 40 C.F.R. § 745.87.

25. Pursuant to Sections 402, 406, and 407 of TSCA, 15 U.S.C. §§ 2682, 2686, and 2687, EPA promulgated the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E, prescribing procedures and requirements for: the accreditation of renovator training programs; certification of individuals and firms engaged in lead-based paint activities; work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities; and recordkeeping to demonstrate compliance with work practice standards. *73 Fed. Reg.* 21691 (April 22, 2008).

26. 40 C.F.R. § 745.82(a) provides that Subpart E applies to all renovations performed in target housing and child-occupied facilities, with certain exceptions not relevant here.

27. 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.

28. 40 C.F.R. § 745.83 defines *pamphlet* to mean the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*

developed under Section 406(a) of TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revisions or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

29. 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; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces.

30. 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.

31. 40 C.F.R. § 745.83 defines *interim controls* to mean a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

32. 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.

33. 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, applies to all renovations performed for compensation in target housing and child-occupied facilities, with exceptions not relevant here. 40 C.F.R. § 745.82.

34. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

35. 40 C.F.R. § 745.86(a) requires firms performing renovations to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of three years following completion of the renovation.

36. 40 C.F.R. § 745.86(b)(6) requires a firm to retain records that document compliance with the work practice standards in 40 C.F.R. § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).

37. 40 C.F.R. § 745.87(b) requires firms performing renovations to establish and maintain records and make them available or permit access to or copying of records.

38. 40 C.F.R. § 745.81(a)(2)(ii) requires that 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).

Factual Allegations

Lease Transactions

39. Between December 14, 2018 and August 31, 2023, Respondent owned residential single and multi-family dwelling homes in Indiana listed in Appendix A.

40. Respondent's properties are "target housing" as defined in 40 C.F.R. § 745.103.

41. On the dates indicated in Appendix A, Respondent entered into 26 lease agreements (contracts) with individuals for the lease of Respondent's properties and apartment units within Respondent's properties.

42. Each of the 26 contracts referred to in Appendix A, covered a term of occupancy greater than 100 days.

43. Respondent is a "lessor," as defined in 40 C.F.R. § 745.103, because it offered the target housing referred to in Appendix A, for lease.

44. Each individual who signed a lease to pay rent in exchange for occupancy of the target housing referred to in Appendix A became a "lessee" as defined in 40 C.F.R. § 745.103.

Renovation at 2517 South Twyckenham Drive, South Bend, Indiana 46614

45. The Respondent directed workers to perform for compensation, modifications of existing structures that resulted in disturbances of painted surfaces at 2517 South Twyckenham Drive, South Bend, Indiana 46614 (Subject Property), a single-family residential house built in 1947, starting on November 4, 2022.

46. For the contracted renovation at the Subject Property, Respondent performed or directed to perform modifications of the building's existing structures that resulted in disturbance of painted surfaces and were therefore renovations as defined in 40 C.F.R. § 745.83.

47. The renovation at the Subject Property was 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 1 - 7 Failure to include a Lead Warning Statement

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

49. Respondent either failed to include a lead warning statement, within the contract or as an attachment to the contract for the lease of Respondent's properties, or failed to provide a lead warning statement before the lessee is obligated under the lease, for 7 lease contracts referenced in Appendix A, Line No. 2, 3, 20, 22, 23, 25.

50. Respondent's failure to include a lead warning statement, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 7 lease contracts referenced in Appendix A, Line No. 2, 3, 20, 22, 23, 25, and 26 constitutes 7 separate violations of 40 C.F.R. § 745.113(b)(1), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 8 - 15 Failure to Disclose Lead Knowledge

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

52. Respondent failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 8 lease contracts referenced in Appendix A, Line No. 2, 3, 4, 20, 22, 23, 25, and 26.

53. Respondent's failure to include a statement disclosing either the presence of any

known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, either within the contract or as an attachment to the contract for the lease of Respondent's properties, constitutes 8 separate violations of 40 C.F.R. § 745.113(b)(2), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 16 - 24 Failure to Include Lead Records or Reports

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

55. Respondent failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 9 lease contracts referenced in Appendix A, Line No. 2, 3, 4, 5, 20, 22, 23, 25, and 26.

56. Respondent's failure to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or a statement that no such records are available, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 9 lease contracts referenced in Appendix A, Line No. 2, 3, 4, 5, 20, 22, 23, 25, and 26, constitutes 9 separate violations of 40 C.F.R. § 745.113(b)(3), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 25-40 Failure to include an Affirmation of Receipt of Required Lead Hazard

Pamphlet

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

58. Respondent failed to include a statement by the lessee affirming receipt of the

information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 16 lease contracts referenced in Appendix A, Line No. 1- 3, 6, 9, 13-17, 20, 22-26 .

59. Respondent's failure to include a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 16 lease contracts referenced in Appendix A, Line No. 1- 3, 6, 9, 13-17, 20, 22-26, constitutes 16 separate violations of 40 C.F.R. § 745.113(b)(4), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 41-55 Failure to Include Required Statement by Agents Informing Lessor of Obligations

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

61. Respondent failed to include, as an attachment or within a contract to lease target housing, a statement by one or more agents involved in the transaction to lease target housing that the agent(s) has informed the lessor of the lessor's obligations and that the agent(s) is aware of his/her duty to ensure compliance with the Disclosure Rule for the lease of Respondent's properties for 15 lease contracts referenced in in Appendix A, Line No. 2-5, 8, 10, 11, 12, 18, 20-23, 25, and 26.

62. Respondent's failure to include, as an attachment or within a contract to lease target housing, a statement by one or more agents involved in the transaction to lease target housing that the agent(s) has informed the lessor of the lessor's obligations and that the agent(s) is aware

of his/her duty to ensure compliance with the Disclosure Rule for the lease of Respondent's properties for 15 lease contracts referenced in in Appendix A, Line No. 2-5, 8, 10, 11, 12, 18, 20-23, 25, and 26 constitutes 15 separate violations of 40 C.F.R. § 745.113(b)(5), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Counts 56-69 Failure to Certification of Accuracy of Statements

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

64. Respondent failed to include the signatures of the lessor, agent, and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 14 lease contracts referenced in paragraph 20, Line No. 1- 3, 7, 9, 14, 15, 19, 20-23, 25, and 26.

65. Respondent's failure to include the signatures of the lessor, agent, and the lessees certifying to the accuracy of their statements and the dates of such signatures, either within the contract or as an attachment to the contract for the lease of Respondent's properties for 14 lease contracts referenced in Appendix A, Line No. 1- 3, 7, 9, 14, 15, 19, 20-23, 25, and 26, constitutes 14 separate violations of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, and 42 U.S.C. § 4852d(b)(5).

Count 70 - Failure to Provide Required Pamphlet

66. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

67. For the renovation project at the Subject Property, Respondent failed to provide the adult occupant of the unit with the EPA-approved lead hazard information pamphlet.

68. For the renovation project at the Subject Property, Respondent's failure to provide the adult occupant of the unit with the EPA-approved lead hazard information pamphlet violated 40 C.F.R. § 745.84(a)(2) and 15 U.S.C. § 2689.

Count 71 - Failure to Post Warning Signs

69. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

70. For the renovation project at the Subject Property, Respondent failed to 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 prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

71. For the renovation project at the Subject Property, Respondent's failure to 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 prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed violated 40 C.F.R. § 745.85(a)(1) and 15 U.S.C. § 2689.

Counts 72-77 Failure to Maintain Records

72. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

73. For the renovation project at the Subject Property, Respondent failed to retain the following records necessary for a period of 3 years following completion of the renovation activities:

- a. documentation that a certified renovator was assigned;
- b. documentation that the certified renovator performed on-the-job training for workers;
- c. documentation that the certified renovator performed or directed workers to perform the work practice standards;
- d. documentation that the certified renovator performed the post-cleaning verification;
- e. a copy of the certified renovator's training certificate;
- f. certification from the certified renovator;

74. For the renovation project at the Subject Property, Respondent's failure to retain the records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities, constitutes 6 violations of 40 C.F.R. § 745.86(b)(6) and 15 U.S.C. § 2689.

Count 78 - Failure to Obtain Firm Certification

75. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

76. Respondent failed to obtain firm certification from EPA pursuant to 40 C.F.R. § 745.89 prior to performing renovations for compensation at the Subject Property.

77. Respondent's failure to obtain firm certification from EPA prior to performing renovations for compensation at the Subject Property violated 40 C.F.R. § 745.81(a)(2)(ii), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count 79 - Failure to Ensure Renovations Performed by Certified or Trained Renovators

78. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

79. For the renovation project at the Subject Property, Respondent failed to 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 § 745.90.

80. Respondent's failure to ensure that all individuals performing renovation activities at the Subject Property on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90, violated 40 C.F.R. § 745.89(d)(1) and 15 U.S.C. § 2689.

Count 80 - Failure to Ensure Renovator Discharges all Required Responsibilities

81. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

82. For the renovation project at the Subject Property, Respondent failed to ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

83. Respondent's failure to ensure that all individuals performing renovation activities at the Subject Property on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90, violated 40 C.F.R. § 745.89(d)(2) and 15 U.S.C. § 2689.

Count 81 - Failure to Remove Objects from Work Area prior to Renovation

84. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

85. For the renovation project at the Subject Property, Respondent failed to, before beginning the renovation, remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material.

86. For the renovation at the Subject Property, Respondent's failure to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material violated 40 C.F.R. § 745.85(a)(2)(i)(A) and 15 U.S.C. § 2689.

Count 82 - Failure to Close and Cover all Ducts prior to Renovation

87. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

88. For the renovation project at the Subject Property, Respondent failed to, before beginning the renovation, close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

89. For the renovation at the Subject Property, Respondent's failure to, before beginning the renovation, close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material violated 40 C.F.R. § 745.85(a)(2)(i)(B) and 15 U.S.C. § 2689.

Count 83 - Failure to Cover Surfaces

90. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

91. For the renovation project at the Subject Property, Respondent failed to, before beginning the renovation, cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

92. For the renovation at the Subject Property, Respondent's failure to, before beginning the renovation, cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, violated 40 C.F.R. § 745.85(a)(2)(i)(D) and 15 U.S.C. § 2689.

Count 84 - Failure to Ensure all items are free of Dust and Debris

93. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

94. For the renovation project at the Subject Property, Respondent failed to use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

95. For the renovation project at the Subject Property, Respondent's failure to use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area violated 40 C.F.R. § 745.85(a)(2)(i)(E) and 15 U.S.C. § 2689.

Count 85 - Failure to Prohibit use of High-speed Power Tools

96. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

97. For the renovation project at the Subject Property, Respondent failed to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control.

98. For the renovation project at the Subject Property, Respondent's failure to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control, violated 40 C.F.R. § 745.85(a)(3)(ii) and 15 U.S.C. § 2689.

Count 86 - Failure to Contain Waste

99. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

100. For the renovation project at the Subject Property, Respondent failed to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

101. For the renovation project at the Subject Property, Respondent's failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal violated 40 C.F.R. § 745.85(a)(4)(i) and 15 U.S.C. § 2689.

Count 87 - Failure to Collect Contained Waste to Prevent Access

102. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

103. For the renovation project at the Subject Property, Respondent failed to, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that

has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

104. For the renovation project at the Subject Property, Respondent's failure to, at the conclusion of each work day and/or at the conclusion of the renovation, ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris violated 40 C.F.R. § 745.85(a)(4)(ii) and 15 U.S.C. § 2689.

Count 88 - Failure to Clean the Work Area

105. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

106. For the renovation project at the Subject Property, Respondent failed to clean the work area until no dust, debris or residue remains after the renovation has been completed.

107. For the renovation project at the Subject Property, Respondent's failure to clean the work area until no dust, debris or residue remains after the renovation has been completed violated 40 C.F.R. § 745.85(a)(5) and 15 U.S.C. § 2689.

Count 89 - Failure to Collect and Seal all Paint Chips

108. Complainant incorporates paragraphs 1 through 8, 19 through 38, and 45 through 47, of this CAFO as if set forth in this paragraph.

109. For the renovation project at the Subject Property, Respondent failed to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it.

110. For the renovation project at the Subject Property, Respondent's failure to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it violated 40 C.F.R. § 745.85(a)(5)(i)(A) and 15 U.S.C. § 2689.

Civil Penalty

111. 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 \$20,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of such prior violations, the degree of culpability. Complainant also considered EPA's Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007 and 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, Revised April 5, 2013.

112. Respondent agrees to pay a civil penalty in the amount of \$20,000 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date"). EPA conducted an analysis of Respondent's financial information and determined Respondent has a limited ability to pay. Consequently, in accordance with applicable law, EPA determined that the Assessed Penalty is an appropriate amount to settle this action.

113. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments->

[epa.](#)

114. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Agreement, TSCA-05-2024-0010,

b. Concurrently with any payment or within 24 hours of any payment,

Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Craig Meredith (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5

meredith.craig@epa.gov

and

R5lecab@epa.gov

Robin L. Jacobs (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
jacobs.robin@epa.gov

U.S. Environmental Protection
Agency Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

115. Interest, Charges, and Penalties on Late Payments. Pursuant to 15 U.S.C. § 2615, 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed each subsequent thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty, as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid

portion of the Assessed Penalty, interest, and other charges, that remain delinquent more than ninety (90) days.

116. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions may include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
- d. Per 15 U.S.C. § 2615(a), the Attorney General will bring a civil action in the appropriate district court to recover the full remaining balance of the debt plus interest. In such an action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

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

General Provisions

118. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: jacobs.robin@epa.gov (for Complainant), and jackie.stevenson@cpmchoicepropertymanagement.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

120. 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.

121. This CAFO does not affect Respondent's responsibility to comply with the Lead Act and the Disclosure Rule and other applicable federal, state and local laws.

122. Respondent certifies that it is complying with the Lead Act and the Disclosure Rule.

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

124. 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.

125. Each party agrees to bear its own costs and attorneys fees in this action.

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

In the Matter of:

JMS Companies, LLC (dba: Choice Property Management), Respondent

Docket No. TSCA-05-2024-0010:

Jacqueline D. Stevenson

Jacqueline D. Stevenson

CEO/Registered Agent

JMS Companies, LLC (dba: Choice Property Management)

5/30/2024

Date

**In the Matter of:
JMS Companies, LLC (dba: Choice Property Management), Respondent
Docket No. TSCA-05-2024-0010:**

United States Environmental Protection A

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
JMS Companies, LLC (dba: Choice Property Management), Respondent
Docket No. TSCA-05-2024-0010:**

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.

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

Appendix A

Line No.	Address	Apartment No.	Lease Execution Date
1	150 Murray Street South Bend, Indiana 46637		January 16, 2023
2	305 West Navarre Street South Bend, Indiana 46615	Unit 1	August 1, 2019
3	305 West Navarre Street South Bend, Indiana 46615	Unit 1	July 21, 2020
4	305 West Navarre Street South Bend, Indiana 46615	Unit 1	August 10, 2021
5	305 West Navarre Street South Bend, Indiana 46615	Unit 1	August 17, 2022
6	305 West Navarre Street South Bend, Indiana 46615	Unit 2	April 17, 2023
7	305 West Navarre Street South Bend, Indiana 46615	Unit 4	May 15, 2023
8	534 Marion Street Mishawaka, Indiana 46545	Unit A	February 15, 2019
9	534 Marion Street Mishawaka, Indiana 46545	Unit B	March 3, 2023
10	817 West Marion Street Mishawaka, Indiana 46545		September 7, 2022
11	817 West Marion Street Mishawaka, Indiana 46545		October 29, 2021
12	817 West Marion Street Mishawaka, Indiana 46545		September 7, 2022
13	1031 Culver Place South Bend, Indiana 46616		May 27, 2022
14	1513 North Wellington Street South Bend, Indiana 46628		February 27, 2023
15	1529 West Indiana Avenue South Bend, Indiana 46613	Apartment B	January 9, 2023
16	1529 West Indiana Avenue South Bend, Indiana 46613	Apartment B	May 15, 2019
17	1529 West Indiana Avenue South Bend, Indiana 46613	Apartment B	April 14, 2020
18	2517 South Twyckenham Drive South Bend, Indiana 46614		November 16, 2021
19	3120 Corby Boulevard South Bend, Indiana 46615		February 28, 2023
20	21858 Belkay Drive South Bend, Indiana 46628		February 24, 2023
21	54221 Maple Lane Avenue South Bend, Indiana 46635		December 1, 2021

Line No.	Address	Apartment No.	Lease Execution Date
22	219 East Oakside Street South Bend, Indiana 46614		June 3, 2020
23	1022 Birchwood Avenue South Bend, Indiana 46619		October 18, 2019
24	1515 East Fox Street South Bend, Indiana 46613		May 17, 2019
25	1734 North Brookfield Street South Bend, Indiana 46628		August 6, 2019
26	1943 East Bowman Street South Bend, Indiana 46613		March 10, 2019