



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

March 31, 2022

VIA ELECTRONIC EMAIL

Terri A. Czajka
Partner
Ice Miller, LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282-0200
terri.czajka@icemiller.com

Consent Agreement and Final Order – In the Matter of: Two Chicks and a Hammer, Inc.,
Docket No. TSCA-05-2022-0004

Dear Ms. Czajka:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on March 31, 2022 with the Regional Hearing Clerk.

The civil penalty in the amount of \$40,000 is to be paid in the manner described in paragraphs 71 and 72.

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,

CHRISTINA
SALDIVAR

Digitally signed by
CHRISTINA SALDIVAR
Date: 2022.03.23
13:16:45 -05'00'

Christina Saldivar
Pesticides and Toxics Compliance Section

Enclosure

cc: Mary McAuliffe, (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. TSCA-05-2022-0004
)	
Two Chicks and a Hammer, Inc. Indianapolis, Indiana)	Proceeding to Assess a Civil Penalty Under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)
Respondent.)	
)	

Consent Agreement and Final Order

I. 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, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Two Chicks and a Hammer, Inc. with a place of business located at 1067 Hosbrook Street, Indianapolis, Indiana 46203.

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. This CAFO resolves an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Pursuant to Section

16(a)(2)(C), the Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

II. Jurisdiction and Waiver of Right to Hearing

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

Respondent:

- a. admits the jurisdictional allegations in this CAFO;
- b. neither admits nor denies specific factual allegations in this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified in this CAFO;
- f. waives any right to contest the alleged violations of law set forth in the CAFO, as provided in 40 C.F.R. § 22.15(c); and
- g. waives its rights to appeal the Final Order.

III. Statutory and Regulatory Background

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

the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

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

11. Section 11 of TSCA, 15 U.S.C. § 2610, provides EPA with authority to conduct inspections upon the presentation of appropriate credentials and a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected.

12. Section 402(a) of TSCA, 15 U.S.C. § 2682(a), required the Administrator of EPA to promulgate regulations to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; 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.

13. Section 402(c) of TSCA, 15 U.S.C. § 2682(c), required the Administrator of EPA to promulgate guidelines for the conduct of renovation and remodeling activities to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, 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.

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

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

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

17. 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.

18. Under Sections 402, 404, 406 and 407 of TSCA, 15 U.S.C. §§ 2682, 2684, 2686 and 2687, EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, Residential Property Renovation and Lead-Based Paint Activities, to prescribe procedures and requirements for the accreditation of training programs, certification of individuals and firms engaged in lead-based paint activities, and work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities. *See* 73 Fed. Reg. 21691 (April 22, 2008).

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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.

26. 40 C.F.R. § 745.86(b)(6) requires firms 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), that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project.

27. 40 C.F.R. § 745.87(c) requires firms performing renovations to establish and maintain records and make them available to EPA or permit access to or copying of records.

28. 40 C.F.R. § 745.89(d)(1) requires firms performing renovations in target housing to ensure that all individuals performing the 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.

29. 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).

30. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

31. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19 authorize the Administrator of EPA to assess a civil penalty of up to \$41,056 per violation for each day of violation of Sections 15 and 409 of TSCA that occurred after November 2, 2015, and assessed on or after December 23, 2020.

IV. Factual Allegations and Alleged Violations

32. At all times relevant to this CAFO, Respondent's corporation was a firm as defined by 40 C.F.R. § 745.83.

33. Beginning on or around calendar years 2017 to 2018, renovation activities performed by Respondent were depicted on the television program *Good Bones*.

34. On August 21, 2018, Complainant issued a request for information to Respondent, seeking, among other things, a copy of the renovator certification showing completion of an EPA accredited training course, a copy of the firm certification received by EPA, copies of all contracts and/or agreements for renovation (contracts) and copies of all acknowledgement of receipt of a pamphlet by the owners and occupants of residential housing from September 1, 2015 to August 21, 2018.

35. On February 4, 2019, and January 4, 2020, Respondent provided Complainant with documents responsive to the request for information referenced in Paragraph 34.

36. Based on the information provided to Complainant by Respondent, publicly available video recordings, and building-year information publicly available on the property

value assessment website (accessed on August 27, 2019 and November 19, 2021) of Marion County (<https://www.indy.gov/agency/marion-county-assessors-office>), Respondent performed, or directed workers to perform for compensation, the following modifications of existing structures that resulted in disturbances of painted surfaces in the following residential housing built prior to 1978, referenced in this Table:

Line No.	Residential Property Address	Residence Type	Built Year	Scope of Work	Date Renovated Residential Property Sold
1	2206 N Capitol Street, Indianapolis, Indiana 46208	Single Family	1914	Interior and Exterior Renovation	May 19, 2019
2	609 Sanders Street, Indianapolis, Indiana 46203	Single Family	1904	Comprehensive Renovation	December 6, 2018
3	16 Orange Street Indianapolis, Indiana	Single Family	1900	Interior and Exterior Renovation	January 16, 2020

37. At the three renovations referenced in Paragraph 36, Respondent performed or directed performance of modifications of the buildings' existing structures that resulted in disturbance of painted surfaces, and were therefore renovations as defined in 40 C.F.R. § 745.83.

38. The three renovations referenced in Paragraph 36 were each performed at residential housing built prior to 1978, and therefore each residential housing was target housing as defined in 40 C.F.R. § 745.103.

39. The three renovations referenced in Paragraph 36 were sold to a third party, and therefore Respondent received "compensation" for performing the renovations, as specified in 40 C.F.R. § 745.82(a).

Count 1 – Failure to Obtain Firm Certification

40. Complainant incorporates Paragraphs 1 through 39 of this CAFO as if set forth in this Paragraph.

41. 40 C.F.R. §§ 745.89(a) and 745.82(a)(2)(ii) require firms that perform, offer, or claim to perform renovations for compensation to obtain firm certification under EPA.

42. Respondent was not registered as a certified firm by EPA at the time of the three renovations described in Paragraph 36, and did not qualify for an exemption under 40 C.F.R. § 745.82(b).

43. Respondent's failure to be registered as a certified firm before performing the three renovations described in Paragraph 36, constitutes three violations of 40 C.F.R. § 745.89(a), 40 C.F.R. § 745.81(a)(2)(ii), and 15 U.S.C. § 2689.

Counts 2 to 4 – Failure to Contain the Waste to Prevent Release of Dust and Debris

44. Complainant incorporates Paragraphs 1 through 39 of this CAFO as if set forth in this Paragraph.

45. 40 C.F.R. § 745.85(a)(4)(i) requires waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

46. Respondent performed the three renovations described in Paragraph 36 in the Table, and failed to contain the waste from the renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal.

47. Respondent's failure to contain the waste from the renovation activities to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal in the three renovations described in Paragraph 36, constitutes three violations of 40 C.F.R. § 745.85(a)(4)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 5 to 7: Failure to Contain/Prevent Release of Waste Dust and Debris During Transport

48. Complainant incorporates Paragraphs 1 through 39 of this CAFO as if set forth in this Paragraph.

49. 40 C.F.R. § 745.85(a)(4)(iii) requires waste from renovation activities must be contained to prevent releases of dust and debris when the firm transports the waste.

50. Respondent performed the three renovations described in Paragraph 36 in the Table, and failed to contain the waste from the renovation activities to prevent releases of dust when transporting the waste from the renovation activities to disposal.

51. Respondent's failure to contain the waste from the renovation activities to prevent releases of dust when transporting the waste from the renovation activities to disposal in the three renovations described in Paragraph 36, constitutes three violations of 40 C.F.R. § 745.85(a)(4)(i), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 8 to 10: Failure to Cover the Ground with Plastic Sheeting or Other Disposable Impermeable Material

52. Complainant incorporates Paragraphs 1 through 39 of this CAFO as if set forth in this Paragraph.

53. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires firms 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.

54. Respondent performed the three renovations described in Paragraph 36 in the Table, and 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.

55. Respondent's 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 for the three renovations described in Paragraph 36 in the Table, constitutes three violations of 40 C.F.R. § 745.85(a)(2)(i)(C), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 11 to 13: Failure to Establish All Records Necessary to Demonstrate Compliance with 40 C.F.R. Part 745, Subpart E

56. Complainant incorporates Paragraphs 1 through 39 of this CAFO as if set forth in this Paragraph.

57. In three renovations described in Paragraph 36 in the Table, Respondent failed to establish the records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, for a period of three years following completion of the three renovations.

58. Respondent's failure to establish all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, for a period of three years following the completion of the three renovations described in Paragraph 36 in the Table, constitutes three violations of 40 C.F.R. § 745.87(b), 40 C.F.R. § 745.87(a), TSCA § § 15 and 409, and 15 U.S.C. §§ 2614 and 2689.

Counts 14 to 16: Failure to Ensure All Individuals Performing Renovation Activities are Either Certified Renovators or Have Been Trained by a Certified Renovator

59. Complainant incorporates Paragraphs 1 through 39 of this CAFO as if set forth in this Paragraph.

60. 40 C.F.R. § 745.89(d)(1) requires firms 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 40 C.F.R. § 745.90.

61. Respondent performed the three renovations described in Paragraph 36 in the Table, and failed to ensure that all individuals performing renovation activities on behalf of Respondent's firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90.

62. Respondent's failure to ensure that all individuals performing renovation activities on behalf of Respondent's firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90 for the three renovations described in Paragraph 36 in the Table, constitutes three violations of 40 C.F.R. § 745.89(d)(1), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Counts 17 to 19: Failure to Assign a Certified Renovator to each Renovation Performed

63. Complainant incorporates Paragraphs 1 through 39 of this CAFO as if set forth in this Paragraph.

64. 40 C.F.R. § 745.89(d)(2) requires firms to assign a certified renovator to each renovation performed by the firm and discharge all of the certified renovator responsibilities identified in 40 C.F.R. 40 C.F.R. § 745.90.

65. Respondent performed the three renovations described in Paragraph 36 in the Table, and failed to assign a certified renovator to each of the three renovations and discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

66. Respondent's failure to assign a certified renovator for each of the three renovations described in Paragraph 36 in the Table, constitutes three violations of 40 C.F.R. § 745.89(d)(2), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

V. Consent Agreement

A. Penalty

67. Respondent agrees that, in settlement of the civil penalty claims alleged in this Consent Agreement, Respondent shall pay a civil penalty of \$107,121. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged and, with respect to Respondent, 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.

68. Pursuant to Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), and 40 C.F.R. § 22.31, Respondent and EPA agree that payment of such civil penalty by Respondent is remitted on the conditions set forth in Section V.C. of this CAFO.

69. EPA agrees to remit Sixty-Seven Thousand One Hundred and Twenty-One Dollars (\$67,121) of the civil penalty, for the TSCA violations alleged herein through the Effective Date of this CAFO, conditioned upon Respondent's compliance with all the terms and Conditions set forth in Section V.C., to EPA's satisfaction.

70. EPA and Respondent agree that, in compromise of the civil penalty claims alleged in this Consent Agreement, and upon the Conditions set forth in Section V.C. of this Consent Agreement and

Final Order, Respondent shall pay a civil penalty of forty thousand dollars (\$40,000.00) as set forth below, and shall perform the Settlement Conditions as set forth in this CAFO. The Settlement Conditions are further described below.

71. Within 30 days after the Effective Date of this CAFO, Respondent must pay a \$40,000 civil penalty. Payment of the penalty may be submitted on-line at *www.pay.gov* by entering “SFO 1.1” in the “Search Public Forms” field. Open the on-line form and complete required fields to complete payment. Respondent shall submit proof of payment by submitting a payment receipt via electronic mail as set forth in Paragraph 72, below.

In lieu of submitting payment on-line at *www.pay.gov*, Respondent may send 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

The check must state Respondent’s name and the docket number of this CAFO.

72. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Christina Saldivar
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
saldivar.christina@epa.gov

Mary McAuliffe
Office of Regional Counsel
U.S. EPA, Region 5
mcauliffe.mary@epa.gov

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

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

75. 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.

B. Compliance Requirements

76. Respondent shall comply with all applicable requirements of Sections 402(c) and 406(b) of TSCA and the implementing regulations in connection with any renovations conducted in Target Housing.

77. Respondent shall retain its current Firm Certification as set forth in 40 C.F.R. § 745.89(a). If Respondent intends to continue working on projects that involve renovation of Target Housing beyond the expiration date of Respondent's current Firm Certification, Respondent shall timely renew its Firm Certification as set forth in 40 C.F.R. § 745.89(b).

78. Compliance Management: Respondent will designate an individual employed by Respondent as a point of contact to monitor Respondent's compliance with the requirements of this CAFO and will be the liaison for the purposes of implementing this CAFO.

79. Renovation Firms Hired by Respondent:

a. Respondent shall use only Certified Firms as Contractors to perform any

renovation in Target Housing to the extent required by Sections 402(c) and 406(b) of TSCA and the implementing regulations.

b. Respondent shall ensure its Contractors comply with the requirements of the 40 C.F.R. Part 745, Subpart E.

C. Conditions

80. As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, Respondent agrees to perform the following conditions.

81. Condition 1: Communication of RRP Certification: Respondent shall post a copy of Respondent's Certified Firm OR the EPA certified logo OR an EPA-approved lead outreach banner, to Respondent's public website, currently <https://www.2chicksandahammer.com/>, or an equivalent successor or affiliated internet platform which Respondent owns, manages or controls, within sixty (90) days of the execution of this CAFO and will be maintained on the website for a period of at least two (2) years.

82. Condition 2.A.: Video: Respondent shall produce a Video about renovations involving lead-based paint, primarily featuring Mina Starsiak Hawk, and post the Video in accordance with the requirements in Paragraph 83, below, within ninety (90) days of the Effective Date of this CAFO. Respondent may use footage associated with the television program *Good Bones* to satisfy the requirements of this Paragraph, so long as Respondent acquires the necessary permissions and rights to post such footage to Respondent's website. Respondent shall ensure that all content used by Respondent to satisfy this Video condition is consistent with the requirements of the RRP Rule in 40 C.F.R. Part 745, Subpart E. The Video script and content will be developed in consultation with EPA. The duration of the Video shall be no less than three minutes and shall include, at a minimum, the following elements:

- a. Discussion of the use of lead-based paint in homes prior to 1978 and its continuing presence in older homes;
- b. General discussion of the danger of human exposure to lead-based paint, especially to children;
- c. Discussion of the general nature of the requirements in 40 C.F.R. Part 745, Subpart E, and a recommendation that viewers check these requirements as well as their local and state regulations before renovating a home built prior to 1978;
- d. Discussion of the benefit of using RRP Certified Firms and Renovators;
- e. Visual depiction of how a Certified Renovator tests for lead, and of no less than four (4) of the safe work practices described in 40 C.F.R. § 745.85, such as removing or covering all objects in the work area, including furniture, rugs, and window coverings pursuant to 40 C.F.R. § 745.85(a)(2)(i)(A); closing and covering duct openings pursuant to 40 C.F.R. § 745.85(a)(2)(i)(B); closing windows and covering doors with plastic sheeting pursuant to 40 C.F.R. § 745.85(a)(2)(i)(C); using plastic sheeting or other impermeable materials to cover interior floors pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D) or ground, for exterior renovation, pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C); using a HEPA vacuum attachment with a sanding machine pursuant to 40 C.F.R. § 745.85(a)(3)(ii); containing renovation waste to prevent the release of dust and debris when the waste is removed from the worksite, pursuant to 40 C.F.R. § 745.85(a)(4)(i);
- f. Discussion or depiction of no less of that one (1) example of post-renovation cleaning verification pursuant to 40 C.F.R. § 745.85(b); and
- g. A statement in the credits of the Video indicating that the video project was undertaken in connection with the settlement of an enforcement action taken by the U.S.

Environmental Protection Agency to enforce federal laws.

83. Condition 2.B.: Social Media Posting Conditions: Respondent shall post the Video referenced in Paragraph 82, above, as follows, within sixty (60) days of completion of such Video:

a. Mina Starsiak Hawk shall dedicate from her personal Instagram account, currently @mina_starsiak_hawk, or an equivalent successor Instagram account which Mina Starsiak Hawk owns, manages, or controls, one (1) post with the Video;

b. Two Chicks and a Hammer shall dedicate from its Instagram account, currently @twochicksandahammer, or an equivalent successor Instagram account which Respondent owns, manages, or controls, one (1) post with the Video; and

c. Two Chicks and a Hammer shall post the Video on Two Chicks and a Hammer's Facebook account, currently at <https://www.facebook.com/twochicksindy>, or an equivalent successor Facebook account which Respondent owns, manages, or controls.

84. Condition 3: Additional Social Media Posting Condition:

a. In addition to performing the Social Media Posting Conditions in Paragraph 83, Respondent shall create an Additional Social Media Posting of a YouTube video with information about protecting children from lead exposure, with an introduction by Mina Starsiak Hawk, and content similar and equivalent to either of the following videos: (i) [Lead-Safe Certified Remodeling with Dean Johnson - YouTube](#) or (ii) [Lead screening informational video - YouTube](#).

b. Respondent shall share the Additional Social Media Posting set forth in sub-Paragraph 84.a., above, via Instagram and Facebook postings in accordance with Paragraph 83.

85. Respondent agrees to the extent that Respondent has the right to grant rights, that

the EPA shall have the non-exclusive right to use, republish, and disseminate all content developed and owned by Respondent to satisfy any of the conditions in this CAFO for the purposes of education regarding lead-based paint issues. Respondent does not hereby purport to grant rights to any content developed or owned by others.

86. Respondent shall submit compliance reports to the EPA, beginning sixty (60) days from the Effective Date of this CAFO, and continuing every six (6) months until completion of the Conditions. The initial compliance report shall provide an update on the status of each of the Conditions specified in Paragraphs 81 through 84. Respondent shall describe in the compliance reports how Respondent has complied with the Conditions set forth above and include the following information:

- a. The date Respondent's Certification is posted on Respondent's website and confirmation that Respondent's Certification continues to be posted as required in Paragraph 81;
- b. The date the Video referenced in Paragraph 82 is produced; and
- c. The dates the Videos referenced in Paragraphs 82 and 84 are shared as required in Paragraphs 83 and 84.

87. The compliance reports shall be submitted by electronic mail to Christina Saldivar at saldivar.christina@epa.gov and Mary McAuliffe at mcauliffe.mary@epa.gov.

88. Prior to making a determination that Respondent has failed to comply with any term or condition set forth in Section V.C., EPA will give Respondent written notice or notices of deficiencies, and provide Respondent thirty (30) days to provide to EPA evidence of Respondent's compliance the terms or conditions identified as deficient by EPA.

89. Non-Remittance Order. If EPA determines that Respondent has failed to comply with any material term or condition set forth in Section V.C., fully and satisfactorily, EPA may

issue a Non-Remittance Order requiring Respondent to pay the remaining Sixty-Seven Thousand One Hundred and Twenty-One Dollars (\$67,121) or a lesser amount, plus interest accrued from the Effective Date of this CAFO. EPA may deduct any reasonably documented expenditures or project completions in determining the remaining penalty amount owed. Respondent waives its right to a hearing under Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), or any other law. Respondent further agrees to be bound by EPA's determination under this Paragraph, or, if Respondent invokes dispute resolution in accordance with Paragraph 90, Respondent agrees to be bound by EPA 's determination in dispute resolution.

90. The parties shall use their best efforts informally and in good faith to resolve disputes and differences of opinion, which may arise concerning this CAFO. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any decision made by EPA pursuant to this CAFO with respect to the following: (1) satisfaction of Conditions (Section V.C); or (2) an EPA determination to issue a Non-Remittance Order (Paragraph 89), Respondent shall notify EPA in writing of such objections and the basis (or bases) therefore within twenty (20) calendar days of receipt of EPA 's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis (or bases) for Respondent's position, and any matters the Respondent considers necessary for EPA's determination. Following EPA's receipt of such written notice, EPA will provide Respondent with its final determination in writing on a pending dispute, which decision shall be binding. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

91. Respondent agrees that the time period from the Effective Date of this Consent Agreement until all of the conditions specified in Paragraphs 81 through 87 are completed (the

“Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the “Tolled Claims”) set forth in Section V of this Consent Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

D. Effect of Consent Agreement and General Provisions

92. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of Sections 402, 406, and 407 of TSCA, 15 U.S.C. §§ 2682, 2686, and 2687, and the implementing regulations of those sections at 40 C.F.R. Part 745.

93. Full payment of the penalty proposed and compliance with the terms and conditions set forth in the Conditions section of this CAFO shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent’s obligations to comply with all applicable provisions of TSCA and regulations promulgated thereunder.

94. Complainant reserves the right to enforce the terms and conditions of this CAFO.

E. General Provisions

95. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and Terri.Czajka@icemiller.com, Finley@twochicksandahammer.com, and accounting@twochicksandahammer.com (for Respondent).

96. This CAFO resolves only Respondent’s liability for federal civil penalties for the

violations alleged in the CAFO.

97. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Section V.B. (Compliance Requirements), Section V.C. (Conditions), Paragraph 86 and 87 (reporting), and Paragraph 89 (Non-remittance Order) are restitution, remediation, or required to come into compliance with the law.

98. 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.

99. This CAFO does not affect Respondent's responsibility to comply with TSCA, 15 U.S.C. § 2601 *et seq.*, its implementing regulations, and other applicable federal, state, and local laws.

100. The effect of settlement described in Paragraph 96 is conditioned upon the performance of the conditions set forth in the Conditions section of this CAFO, and the accuracy of Respondent's representations to the EPA, as memorialized in Paragraph 101, below. Failure to comply with the terms and conditions set forth in the Conditions section of this CAFO will void the release provided for in Paragraph 96.

101. Respondent certifies that it is complying with the residential property renovation regulations at 40 C.F.R. Part 745, Subpart E.

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

103. For the purpose of this proceeding, Respondent:

- a. Agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- b. Acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. Waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review;
- d. Consents to personal jurisdiction in any action to enforce this CAFO in federal court; and
- e. Waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in federal court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

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

105. 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.

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

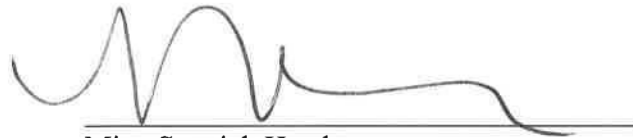
107. This CAFO constitutes the entire agreement between the parties.

108. The Effective Date of this CAFO is the date this CAFO is filed with the Regional Hearing Clerk.

**Consent Agreement and Final Order
In the Matter of: Two Chicks and a Hammer, Inc.**

Two Chicks and a Hammer, Inc., Respondent

3/21/22
Date



Mina Starsiak Hawk
Two Chicks and a Hammer, Inc.

**Consent Agreement and Final Order
In the Matter of: Two Chicks and A Hammer, Inc.**

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by MICHAEL
HARRIS
Date: 2022.03.28 13:24:26
-05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Two Chicks and a Hammer, Inc.
Docket No. TSCA-05-2022-0004

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 COYLE Digitally signed by ANN COYLE
Date: 2022.03.30 10:54:54
-05'00'

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

Consent Agreement and Final Order
In the Matter of: Two Chicks and a Hammer, Inc.
Docket Number: TSCA-05-2022-0004

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 March 31, 2022, this day in the following manner to the addressees:

Copy by e-mail to
Attorneys of Respondent: Ms. Terri Czajka
Ice Miller LLP
terri.czajka@icemiller.com

Copy by e-mail to
Attorney of Complainant: Mary McAuliffe
mcauliffe.mary@epa.gov

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

Dated: _____

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