



4. The *Consolidated Rules of Practice* govern this administrative proceeding pursuant to 40 C.F.R. §§ 22.1(a)(5) and 22.4.

### **III. GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

6. Except as provided in paragraph 5 herein Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

7. 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, and the enforcement of this CAFO.

8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CAFO and waives its right to appeal the accompanying Final Order.

9. Respondent consents to the assessment of the civil penalty stated herein and to any conditions specified herein.

10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. 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.

12. 40 C.F.R. § 745.82(a) provides that the requirements of 40 C.F.R. 745 Subpart E apply to all renovations performed for compensation in target housing, with certain exceptions inapplicable hereto.

13. 40 C.F.R. § 745.83 defines "person" as any natural or judicial person including, *inter alia*, any individual, corporation, partnership, or association.

14. 40 C.F.R. § 745.83 defines "firm" as, *inter alia*, a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.

15. 40 C.F.R. § 745.83 defines “renovation” as the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, with certain exceptions inapplicable hereto.

16. Respondent is a company doing business in the Commonwealth of Pennsylvania with a principle place of business located at 750 Poplar Street, Lancaster, Pennsylvania 17603.

17. At all times relevant to the violations alleged herein, Respondent is and was a “person” and a “firm” within the meaning of 40 C.F.R. § 745.83.

18. At all times relevant to the violations alleged herein, Respondent is and was a “renovator” within the meaning of 40 C.F.R. § 745.83.

19. During various times in 2016 and 2017, Respondent, or persons employed by Respondent, performed “renovations for compensation” within the meaning of 40 C.F.R. § 745.83 at residential properties located in Lancaster, Pennsylvania, at: 1035 Marietta Avenue (“1035 Marietta Property”); 1306 Marietta Avenue (“1306 Marietta Property”); and 650 West Chestnut Street (“Chestnut Property”).

20. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), 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 six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

21. At all times relevant to the violations alleged herein, each of the residential properties identified in paragraph 19 herein was housing built prior to 1978 and was not housing for the elderly or persons with disabilities or any 0-bedroom dwelling and, therefore, was “target housing” within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

22. At all times relevant to the violations alleged herein, at least one “residential dwelling” within the meaning of Section 401(14) of TSCA, 15 U.S.C. § 2681(14), was located at each of the residential properties identified in paragraph 19 herein.

23. The renovations at the 1035 Marietta Property; 1306 Marietta Property; and Chestnut Property were each “renovation[s] performed for compensation at target housing” within the meaning of 40 C.F.R. § 745.82.

24. On or about November 15, 2017, a duly authorized representative of EPA conducted an inspection to determine Respondent’s compliance with 40 C.F.R. 745 Part E in connection with the renovations at the residential properties identified in paragraph 19 herein.

**Counts 1-3 (Failure to Distribute Information)**

25. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

26. 40 C.F.R. § 745.84(a)(1) provides that no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing the firm performing such renovation must provide the owner of the unit with the EPA pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*," and obtain either a written acknowledgement from such owner that the owner has received such pamphlet or obtain a certificate of mailing of such pamphlet at least seven (7) days prior to the renovation.

27. Respondent failed to obtain either the written acknowledgement from each owner of the 1035 Marietta Property; 1306 Marietta Property; and Chestnut Property or the certificate of mailing as described as in paragraph 26 herein as required by 40 C.F.R. § 745.84(a)(1).

28. Respondent's acts or omissions described in paragraph 27 herein constitute three separate violations of 40 C.F.R. § 745.84(a)(1)(i) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

**Count 4 (Failure to Post Warning Signs)**

29. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

30. 40 C.F.R. § 745.85(a)(1) provides that firms performing renovations must post warning signs clearly defining the work area and warning occupants and other persons to stay out of the work area.

31. Respondent failed to post warning signs during the renovation at the 1035 Marietta Property as required by 40 C.F.R. § 745.85(a)(1).

32. Respondent's acts or omissions described in paragraph 31 herein constitute one violation of 40 C.F.R. § 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

**Counts 5-7 (Failure to Retain Records)**

33. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

34. 40 C.F.R. § 745.86(a) provides that firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance with Subpart



E of 40 C.F.R. Part 745, including, where applicable, records described in 40 C.F.R. § 745.86(b)(1)-(6), for a period of three years following completion of such renovations.

35. Respondent failed to retain all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745 for a period of three years following completion of the renovations of the 1035 Marietta Property; 1306 Marietta Property; and Chestnut Property as required by 40 C.F.R. § 745.86(a).

36. Respondent's acts or omissions described in paragraph 35 herein constitute three separate violations of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689, for which a penalty is assessable under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

#### **V. CIVIL PENALTY**

37. In settlement of EPA's claims for civil monetary penalties for the violations of TSCA alleged herein Respondent consents to the assessment of a civil penalty in the amount of **Four Thousand Thirty-Five Dollars (\$4035)** which Respondent shall be liable to pay in accordance with the terms set forth below.

38. The civil penalty is based upon EPA's consideration of a number of factors, including the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B) (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 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 this case with specific reference to EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (as revised April 2013 and amended), the *Adjustment of Civil Monetary Penalties for Inflation*, 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

39. The Parties further acknowledge and represent that the aforesaid settlement is based upon an analysis of Respondent's ability to pay a civil penalty, performed in accordance with EPA's June 29, 2015, *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Proceeding*. This analysis was based upon the following documents submitted to Complainant by Respondent:

Two Dudes Painting Company Tax Returns, Forms 1120S (including Schedules B, K, L, M1, M2, K1; Forms 1125-E, 4562; and Statements 1, 2, 3 and 4), for years 2015 through 2017.

Based on this analysis, EPA has determined that Respondent is unable to pay a civil penalty in excess of the dollar amount set forth in paragraph 37 herein in settlement of the above-captioned action. Respondent has certified that it will be unable to pay the civil penalty amount

in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. Accordingly, Respondent has agreed to pay the civil penalty set forth in paragraph 37 herein plus interest of 1% per annum on the outstanding principal balance according to the following schedule:

1<sup>st</sup> payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

2<sup>nd</sup> payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

3<sup>rd</sup> payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

4<sup>th</sup> payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

5<sup>th</sup> payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

6<sup>th</sup> payment is due within 180 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

7<sup>th</sup> payment is due within 210 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

8<sup>th</sup> payment is due within 240 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$450.23;

9<sup>th</sup> payment is due within 270 days of the date on which the CAFO is mailed or hand-delivered to Respondent = \$446.89.

Under this repayment schedule, Respondent will pay the civil penalty of \$4035 plus interest of \$13.73 as outlined in the chart below:

Payment	Days from CAFO mailing	Principal	Interest	Payment Due
1	30	\$450.23	\$0.00	\$ 450.23
2	60	\$ 447.14	\$ 3.09	\$ 450.23
3	90	\$ 447.62	\$ 2.61	\$ 450.23
4	120	\$ 447.91	\$ 2.32	\$ 450.23
5	150	\$ 448.30	\$ 1.93	\$ 450.23
6	180	\$ 448.74	\$ 1.49	\$ 450.23
7	210	\$ 449.07	\$ 1.16	\$ 450.23

8	240	\$ 449.48	\$ 0.75	\$ 450.23
9	270	\$ 446.51	\$ 0.38	\$ 446.89
<b>TOTAL</b>		<b>\$4,035.00</b>	<b>\$ 13.73</b>	<b>\$4048.73</b>

ACCELERATION: In the event Respondent fails to make any of the foregoing installment payments when due, EPA may, without notice or demand, declare the entire unpaid balance and any accrued interest immediately due and payable.

40. Respondent shall remit payment of the civil penalty described in paragraph 37 herein and any interest, administrative fees and late payment penalties owed, by either certified or cashier’s check, automated clearinghouse, or electronic wire/funds transfer, in accordance with the following:

- a. All payments by Respondent shall include reference to Respondent’s name and address, and the Docket Number of this action, *i.e.*, Docket No. TSCA-03-2019-0070;
- b. All checks shall be made payable to the “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

- d. For additional information concerning other acceptable methods of payment see:

<https://www.epa.gov/financial/makepayment>

- e. At the same time any payment is made, Respondent shall mail or e-mail a copy of each payment (check or written confirmation of each EFT, ACH or online payment) to:

Janet E. Sharke  
 Senior Asst. Regional Counsel  
 U.S. EPA, Region III (3RC50)  
 1650 Arch Street  
 Philadelphia, PA 19103-2029  
 sharke.janet@epa.gov

Regional Hearing Clerk  
 U.S. EPA, Region III (3RC00)  
 1650 Arch Street  
 Philadelphia, PA 19103-2029  
 R3\_Hearing\_Clerk@epa.gov

41. 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 of the penalty specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

42. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

43. INTEREST: In accordance with 40 C.F.R. § 13.11, interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

44. ADMINISTRATIVE COSTS: 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.

45. LATE PAYMENT PENALTY: 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).

46. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

## **VI. GENERAL SETTLEMENT CONDITIONS**

47. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information of, or personally identifiable information from, Respondent.



48. Respondent further certifies that any information submitted and representations made to EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to EPA regarding matters relevant to this CAFO, including information about Respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

#### **VII. CERTIFICATION OF COMPLIANCE**

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

#### **VIII. OTHER APPLICABLE LAWS**

50. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of TSCA or any regulations promulgated thereunder.

#### **IX. RESERVATION OF RIGHTS**

51. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged herein. 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, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO after its effective date.

**X. EXECUTION/PARTIES BOUND**

52. This CAFO shall apply to and be binding upon EPA, Respondent and the officers, employees, contractors, successors, agents and assigns of Respondent. By his signature below, the person signing this CAFO on behalf of Respondent acknowledges that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

**XI. EFFECTIVE DATE**

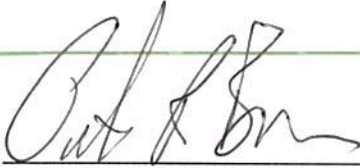
53. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

**XII. ENTIRE AGREEMENT**

54. 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.

For Respondent:

Date: 5/29/19

By: 

Peter R. Barber, President  
Two Dudes Painting Company

For Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: JUN 25 2019 By: 

Karen Melvin  
Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region III  
Complainant

Date: 6/5/2019 By: 

Janet E. Sharke  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
Counsel for Complainant

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>IN RE:</b>	)	
	)	DOCKET NO. TSCA-03-2019-0070
	)	
	)	
Two Dudes Painting Company	)	FINAL ORDER
750 Poplar Street	)	
Lancaster, PA 17603	)	
	)	<b>U.S. EPA-REGION 3-RHC</b> FILED-2JUL2019am10:42
<b>Respondent.</b>	)	Proceeding under Section 16(a) of
	)	the Toxic Substances Control Act,
	)	15 U.S.C. § 2615(a)
	)	

**FINAL ORDER**

Complainant, the Director of Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Two Dudes Painting Company, 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 22.18(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.

Based upon the representations of the Parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (revised April 2013), and the statutory factors set forth in Section 16(a)(2)(B) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2615(a)(2)(B).

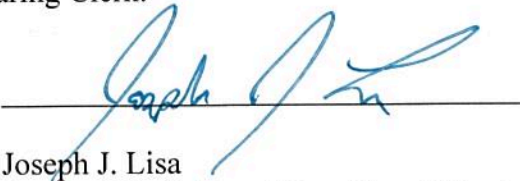
**NOW, THEREFORE, PURSUANT TO** Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and Section 22.18(b)(3) of the *Consolidated Rules of Practice*, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **Four Thousand Thirty-Five Dollars (\$4035)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.



This Final Order constitutes the final Agency action in this proceeding. This Final Order 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 the law. This Final order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of TSCA, as amended, and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

July 2, 2019  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I certify that on JUL 02 2019, the original and one (1) copy of foregoing ***Consent Agreement and Final Order*** (EPA Docket No. TSCA-03-2019-0070) were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via UPS overnight delivery to:

Mr. Stephen J. Matzura, Esq.  
McNees Wallace & Nurick LLC  
100 Pine Street  
Harrisburg, PA 17101  
(Attorney for Respondent)

Copy served via **Hand Delivery or Inter-Office Mail** to:

Janet E. Sharke (3RC50)  
Sr. Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

Dated: JUL 02 2019

Berwin Esposito  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 1Z A43 F77 24 9824 7379