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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912**

September 30, 2019

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (ORC 04-6)  
5 Post Office Square  
Boston, Massachusetts 02109

Re: Mitchell Professional Services of the Seacoast & Lakes Region, Inc.;  
Docket No. TSCA-01-2019-0059

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find a certificate of service for service of the Complaint in hand, and the United States Postal Service return receipt card.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Caitlin Rodgers".

Caitlin Rodgers  
Enforcement Counsel

cc: Jordan Alves

Enclosures:

1. Complaint Cover Letter
2. Complaint and Notice of Opportunity for Hearing
3. *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (40 C.F.R. Part 22)*
4. *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*

(August 2010)

5. Small Business Resources Information Sheet

6. Standing Order Authorizing Filing and Service by E-Mail in Proceedings Before the Region 1  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
Mitchell Professional Services of the Seacoast	)	<b>Docket No.</b>
& Lakes Region, Inc.	)	TSCA-01-2019-0059
9 Kelsey Way, Unit 1	)	
Greenland, New Hampshire 03840	)	<b>COMPLAINT AND</b>
	)	<b>NOTICE OF</b>
Respondent.	)	<b>OPPORTUNITY FOR</b>
	)	<b>HEARING</b>
Proceeding under Section 16(a) of the	)	
Toxic Substances Control Act,	)	
42 U.S.C. § 2615(a)	)	
	)	

**COMPLAINT**

**I. STATUTORY AND REGULATORY BACKGROUND**

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (“EPA”), Region 1. Respondent, Mitchell Professional Services of the Seacoast & Lakes Region, Inc. DBA CertaPro Painters of the Seacoast & Lakes Region (“Mitchell Professional Services” or “Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the

Act”), 42 U.S.C. § 4851 et seq., and the federal regulations promulgated thereunder, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E. Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

2. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

3. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3) by amending 40 C.F.R. Part 745, Subparts E and L (the “Renovation, Repair and Painting Rule” or the “RRP Rule” and the “Lead-Based Paint Activities Rule,” respectively).



4. Pursuant to 40 C.F.R. § 745.82, the regulations in 40 C.F.R. Part 745, Subpart E apply to all renovations performed for compensation in “target housing” and “child-occupied facilities.” The definition of “renovation” includes the renovation of a building for the purpose of converting of a building or portion of a building to target housing. “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling. Child-occupied facility is defined as a building or portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days with in any week . . . provided that each day’s visit lasts at least 3 hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at last 60 hours. 40 C.F.R. § 745.83. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. They may be located in target housing or in public or commercial buildings. 40 C.F.R. § 745.83.

5. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, the certification of renovation firms and individual renovators, the work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities, and the establishment and maintenance of records.

6. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the

failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

7. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

8. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Inflation Adjustment Rule set forth at 40 C.F.R. Part 19 ("Penalty Inflation Rule"), each such TSCA violation that occurred after December 6, 2013, is subject to penalties of up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643 (November 6, 2013). Pursuant to the 2015 Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and the 2019 Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$39,873 for each such violation that occurs after November 2, 2015, and for which penalties are assessed on or after February 6, 2019. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 84 Fed. Reg. 2056 (February 6, 2019).

## **II. GENERAL ALLEGATIONS**

9. Respondent is a corporation registered in New Hampshire with its principal place of business located at 9 Kelsey Way, Unit 1, Greenland, New Hampshire. Respondent provides residential and commercial painting, renovation and building restoration.

10. In May 2018, Mitchell Professional Services was hired by Mark Hepp, the owner of a multiple family residence located at 393 New Castle Avenue, Portsmouth, NH

(“Mark Hepp”) to conduct scraping, spot priming bare areas, caulking as needed and the application of paint to certain areas of the residence (“393 New Castle”). The inspectors did not see child occupants at the residence. At all times relevant to this complaint, 393 New Castle contained multiple occupied residential apartments.

11. The 393 New Castle building was constructed in the 1860s as a toll house and was later converted to residential apartments.

12. At all times relevant to this Complaint, 393 New Castle was “target housing,” as defined in 40 C.F.R. § 745.83. Furthermore, the building did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

13. In July 2018, Mitchell Professional Services was hired by Kelsey Klementowicz, the owner of 244 Marcy Street, Portsmouth, NH (“Kelsey Klementowicz”) to conduct scraping, spot priming bare areas, caulking as needed and the application of paint to certain areas of the single-family residential building located at 244 Marcy Street in Portsmouth, New Hampshire (“244 Marcy”). At all times relevant to this complaint, 244 Marcy was an occupied single-family residential home.

14. 244 Marcy was constructed in 1790 as a as a single-family residence and remains as a single-family residence.

15. At all times relevant to this Complaint, 244 Marcy was “target housing,” as defined in 40 C.F.R. § 745.83. Furthermore, 244 Marcy did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

16. Respondent obtained firm certification on May 25, 2010, from EPA pursuant to 40 C.F.R. § 745.89 of the RRP Rule. That certification expired on May 24,



2015. On September 10, 2018, Respondent was re-certified as a firm by EPA pursuant to the RRP Rule.

17. At all times relevant to the allegations in this Complaint, Respondent's painting operations at both 393 New Castle and 244 Marcy were "renovations," as defined in 40 C.F.R. § 745.83.

18. At all times relevant to the allegations in this Complaint, the painting operations at 393 New Castle and 244 Marcy were "renovations for compensation" subject to the RRP Rule. *See* 40 C.F.R. § 745.82. Furthermore, the painting operations did not satisfy the requirements for an exemption to the provisions of the RRP Rule. *See* 40 C.F.R. §§ 745.82(a) and (b) and 745.83.

19. At all times relevant to the allegations in this Complaint, Respondent was a "renovator" as defined in 40 C.F.R. § 745.83.

20. At all times relevant to the allegations in this Complaint, Respondent was a "firm," as defined in 40 C.F.R. § 745.83.

21. On August 28, 2018, an EPA inspector observed paint chips and siding debris scattered throughout the worksite and extending beyond a non-disposable drop cloth at 244 Marcy. The inspector observed that a small reciprocating saw was used to cut into painted siding. A HEPA vacuum was not used on the cutting tool while replacing the siding as required by the RRP Rule. *See* 40 C.F.R § 745.85(a)(2). The inspector advised the workers at the site to clean the area with a HEPA vacuum, and to put down plastic sheeting, which they did. The workers were wearing yellow CertaPro shirts, and the inspector determined that Mitchell Professional Services had been hired for the painting operations at 244 Marcy.



22. On August 28, 2018, an EPA inspector observed paint chips scattered throughout the property at 393 New Castle. In addition, plastic sheeting did not extend 10 feet from the base of the building. *See* 40 C.F.R § 745.85(a)(2). The workers were wearing yellow CertaPro shirts and the inspector determined that Mitchell Professional Services was hired for the painting operations at 393 New Castle.

23. On September 5, 2018, two EPA representatives met with Scott Mitchell, owner of Mitchell Professional Services, at Dunkin Donuts, 531 Islington St, Portsmouth, New Hampshire, to explain the RRP Rule requirements and conduct a follow up inspection regarding both 244 Marcy and 393 New Castle.

24. As a result of the inspections, Complainant has identified the following violations of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth at 40 C.F.R. Part 745, Subpart E.

### **III. VIOLATIONS**

#### **Count 1 - Failure to Obtain Firm Re-Certification**

25. Complainant incorporates by reference paragraphs 1 through 24.

26. Pursuant to 40 C.F.R. § 745.89(b), to maintain its certification a firm must be re-certified by EPA every five years. Pursuant to 40 C.F.R. § 745.81(b)(1)(iii), if the EPA certified firm fails to obtain re-certification under 40 C.F.R. § 745.81(a) before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew.

27. At the time of the EPA's August 28, 2018 site visits at 393 New Castle and 244 Marcy, although painting operations were ongoing, Mitchell Professional

Services' firm certification had expired, and the company had not obtained re-certification.

28. Respondent's failure to obtain firm re-certification before beginning painting operations at both 393 New Castle and 244 Marcy constitutes a violation of 40 C.F.R. § 745.81(a) and 40 C.F.R. § 745.89(b)(1)(iii).

29. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.81(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

### **Count 2 – Failure to Post Signs**

30. Complainant incorporates by reference paragraphs 1 through 29.

31. Pursuant to Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post renovation cleaning verification have been completed.

32. At the time of the August 28, 2018 EPA site visit at 244 Marcy, there were no warning signs posted outside of the area where painting operations were being performed.

33. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area violated 40 C.F.R. § 745.89(d)(3) and 40 C.F.R. § 745.85(a)(1).

34. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

### **Count 3 – Failure to Contain Work Area**

35. Complainant incorporates by reference paragraphs 1 through 34.

36. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2) the firm must 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.

37. At the time of the renovation at 244 Marcy, Respondent did not adequately contain the work area. On August 28, 2018, EPA inspectors observed debris from painting operations scattered throughout the worksite with some debris extending past canvas drop cloths, which failed to cover the ground 10 feet from the base of the residence.

38. Respondent's failure to contain the waste from the painting operations activities at 244 Marcy by collecting falling paint debris constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2), and Section 409 of TSCA.

39. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

**Count 4 - Failure to Maintain Compliance Records**

40. Complainant incorporates by reference paragraphs 1 through 39.

41. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations in target housing must retain for a period of at least three (3) years following completion of a renovation all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E. The records to be retained include in pertinent part, written proof of receipt or delivery of pre-renovation education information (the pamphlet) pursuant to 40 C.F.R. § 745.86(b)(2) through (4), as well as documentation of compliance with work practice standards (40 C.F.R. § 745.85) and certified renovator requirements pursuant to 40 C.F.R. § 745.86(b)(6).

42. With respect to the 393 New Castle renovation, Respondent did not retain all records necessary to demonstrate compliance with the RRP Rule.

43. Respondent's failure to retain all records necessary to demonstrate compliance with the RRP Rule, violated 40 C.F.R. §§ 745.86(a) and (b).

44. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

**IV. PROPOSED PENALTY**

45. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent and gravity of



the violations and, with respect to Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

46. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's August 2010 Interim Final Policy entitled, "Consolidated Enforcement Response and Penalty Polity for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" (the "LBP Consolidated ERPP"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. Complainant proposes that Respondent be assessed a civil penalty in the amount of **thirteen thousand seven hundred twenty-nine dollars (\$13,729)** for the TSCA violations alleged in this Complaint. (*See* Attachment I to this Complaint explaining the reasoning for this penalty.) The provisions violated and the corresponding penalties are as follows:

<b>REQUIREMENT</b>	<b>PROVISION</b>	<b>PENALTY</b>
Failure Obtain Firm Re-certification	40 C.F.R. §§ 745.81(a) and 745.89(b)(1)(iii)	\$1,556
Failure to Post Signs	40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(1)	\$4,080
Failure to Contain Work Area	40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)	\$6,223
Failure to Maintain Compliance Records	40 C.F.R. §§ 745.86(a) and (b)	\$622

*In the Matter of Mitchell Professional Services of the Seacoast & Lakes Region, Inc.:*  
TSCA-01-2019-0059

Subtotal	\$12,481
Culpability (10%)	\$1,248
<b>Total Penalty</b>	<b>\$13,729</b>

47. The proposed penalty may be adjusted if Respondent establishes *bona fide* issues or defenses relevant to the appropriate amount of the penalty. Respondent shall pay the civil penalty with a cashier's or certified check, payable to the Treasurer, United States of America. Respondent should note on the check the docket number of this Complaint (EPA Docket No. TSCA-01-2019-0059). The check shall be forwarded to:

U.S. Environmental Protection Agency  
 Fines and Penalties  
 P.O. Box 979077  
 St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk  
 U.S. Environmental Protection Agency – Region 1  
 5 Post Office Square, Suite 100 (ORC 04-6)  
 Boston, Massachusetts 02109-3912

and

Caitlin Rodgers, Enforcement Counsel  
 U.S. Environmental Protection Agency – Region 1  
 5 Post Office Square, Suite 100 (OARM/MSD 05-5)  
 Boston, MA 02109-3912

48. Neither the assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

**V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

49. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

50. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

51. Respondent shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda A. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORC 04-6  
Boston, Massachusetts 02109-3912

52. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Caitlin Rodgers, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Caitlin Rodgers  
Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: MSD 05-5  
Boston, Massachusetts 02109-3912

53. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent, without further proceedings, thirty (30) days after the default order becomes final.

54. The filing of service of documents other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the *In the Matter of Mitchell Professional Services of the Seacoast & Lakes Region, Inc.*; TSCA-01-2019-0059



Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

#### **VI. SETTLEMENT CONFERENCE**

55. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent’s counsel should contact Caitlin Rodgers, Enforcement Counsel, at the address cited above or by calling (617) 918-1059. Please note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.



Karen McGuire  
Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 1

9/27/19  
Date

## ATTACHMENT I

### **In the Matter of Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters**

Docket Number: TSCA-01-2019-0059

#### PROPOSED PENALTY SUMMARY

##### 1. RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

The following provides the justification for the proposed penalty calculation in the administrative penalty action against **Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters**, which seeks to assess a civil penalty in the amount of **\$13,729** for alleged violations of the Renovation, Repair and Painting (“RRP”) Rule. The penalty was calculated according to EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“LBP Consolidated ERPP”). A breakdown of the penalty by count is set forth below.

##### **COUNT I. Failure to Obtain Firm Re-Certification**

**Provision Violated:** Pursuant to 40 C.F.R. § 745.89(b), to maintain its certification a firm must be re-certified by EPA every five years. Pursuant to 40 C.F.R. § 745.81(b)(1)(iii), if the EPA certified firm fails to obtain re-certification under 40 C.F.R. §745.81(a) before the firm’s current certification expires, the firm must not perform renovations or dust sampling until it is certified anew.

**Circumstance Level:** The failure of an EPA-certified firm to stop renovations or dust sampling if it does not obtain recertification results in a *low probability* of impacting human health and the environment because a firm that is not certified by EPA is less likely to comply with the work practice standards of 40 C.F.R § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.81(b)(1)(iii) is a *Level 5a* violation.

**Extent of Harm:** The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The documented absence of children or pregnant women warrants a *minor* extent factor.

Respondent **Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters** failed to obtain firm re-certification before conducting a renovation at the following target housing unit:

Respondent/ General Contractor	Work Site Address	Description of RRP Work	Work Date	Children/ Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters	393 Newcastle Ave Portsmouth, NH	Exterior Renovations	Beginning August 2018	None	5a/Minor	\$1,556

### **COUNT II. – Failure to Post Signs**

**Provision Violated:** Failure of a firm to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area; 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(1); Level 1b

**Circumstance Level:** The failure to post warning signs clearly defining the work area results in a *high probability* of a renovation impacting human health. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(1) is a *Level 1b* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent **Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters** failed to post warning signs before conducting renovations at the following target housing unit:



Respondent/ General Contractor	Work Site Address	Description of RRP Work	Work Date	Children/ Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters	244 Marcy Street Portsmouth, NH	Exterior Renovations	Beginning August 2018	None	Ib/Minor	\$4,080

**COUNT III. - Failure to Contain Work Area Area**

**Provision Violated:** Failure to properly contain exterior work area by covering the ground with plastic to collect falling paint debris; 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C).

**Circumstance Level:** The failure to establish and maintain records demonstrating compliance with the RRP results in a *high probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) and is a *Level 2a* violation.

**Extent of Harm:** The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters failed to properly contain the work, warranting a *minor* extent factor.

Respondent/ General Contractor	Work Site Address	Description of RRP Work	Work Date	Children/ Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
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Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters	244 Marcy St Portsmouth, NH	Exterior Renovations	Beginning September 2018	None	2a/Minor	\$6,223
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**COUNT IV. – Failure to Maintain Compliance Records**

**Provision Violated:** 40 C.F.R. § 745.86 requires firms to retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities.

**Circumstance Level:** Failure to retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities pursuant to 40 C.F.R. § 745.86 may result in a *low probability* of impacting human health and the environment. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.86 is a *Level 6a* violation.

**Extent of Harm:** The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The documented absence of children or pregnant women warrants a *minor* extent factor. According to the EPA’s *Consolidated Enforcement Response and Penalty Policy for Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-based Paint Activities Rule* (LBP Consolidated ERPP) August 2010) (Revised April 2013), Appendix A, page A-3, Footnote 49 states that for larger firms, such as those acting as general contractors, the “Extent” category (for this count) is usually “major” because the potential impact is greater in the number and size of the renovations.

Respondent Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters failed to retain records necessary to demonstrate compliance with the RRP Rule.

Respondent/ General Contractor	Work Site Address	Description of RRP Work	Work Date	Children/ Ages	Circumstance/ Extent of Harm Levels	Gravity-Based Penalty
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Mitchell Professional Services of the Seacoast and Lakes Region DBA CertaPro Painters	393 Newcastle Ave Portsmouth NH	Exterior Renovations	Beginning September 2018	None	6a/Minor	\$622
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**Proposed Penalties:**

<b>RRP:</b>	<b>\$12,481</b>
<b>Plus 10% Culpability</b>	<b>\$1,248</b>
<b>Total:</b>	<b>\$13,729</b>