

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

_____)	
IN THE MATTER OF:)	
)	
Build-It Bros., L.L.C.)	
38 Mussey Road)	EPA Docket No.
Scarborough, ME 04074)	TSCA-01-2019-0055
)	
Respondent.)	
)	
Proceeding under Section 16(a))	
of the Toxic Substances Control)	
Act, 15 U.S.C. § 2615(a))	
_____)	

INITIAL DECISION AND DEFAULT ORDER

This civil administrative proceeding was commenced under the authority of Section 16 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615, and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) found at 40 C.F.R. Part 22.

This proceeding was initiated by an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) filed by Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”) against Respondent, Build-It Bros., L.L.C. (“Build-It Bros.” or “Respondent”) on or about September 30, 2019. The Complaint alleges that Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the requirements contained in 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Paint Rule” or “RRP Rule”).

In the currently pending Motion for Default Order (“Motion for Default”), Complainant alleges that Respondent is in default for failure to file an Answer to the Complaint. Based upon the record for

this matter and the following TSCA Findings of Fact and Conclusions of Law, Complainant's Motion for Default is hereby **GRANTED**. Respondent is hereby found in default and held liable for the TSCA violations alleged by Complainant.

Complainant has requested that a penalty of one thousand four hundred and fifty-six dollars (\$1,456.00) be assessed. As explained in more detail below, because I have determined that the requested penalty is appropriate, I will assess a penalty at the amount of **\$1,456.00**.

BACKGROUND

Pursuant to Section 409 of the TSCA, 15 U.S.C. § 2689, and the federal regulations promulgated pursuant to this section at 40 C.F.R. Part 745, Subpart E, this civil administrative proceeding was initiated by EPA through the issuance of a Complaint on or about September 30, 2019 against Build-It Bros. The Complaint charged Respondent with four violations of Section 409 of TSCA for failing to obtain certification, provide a lead certification pamphlet, ensure a certified renovator, and contain the exterior work area as required by 40 C.F.R. §§ 745.81, 745.84, 745.85 and 745.89 of the RRP Rule.

In relevant part, the Complaint explicitly states on page 16, section V, paragraph 56, *Notice of Opportunity to Request a Hearing*, that:

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 of the Consolidated Rules of Practice, Respondent has a right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. A request for a hearing must be incorporated into a written Answer. **Respondent must file the original and one copy of the written answer to this Complaint within thirty (30) days of Respondent's receipt of this Complaint. [...]**

Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. See 40 C.F.R. § 22.15 for the required contents of an Answer.

Under 40 C.F.R § 22.15(a) of the Consolidated Rules, an Answer to the Complaint must be filed with the Regional Hearing Clerk within thirty days after service of the Complaint. Under 40 C.F.R. §

22.17(a), a party may be found in default by failing to file a timely Answer to a Complaint. This default “constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations.” 40 C.F.R. § 22.17(a). Therefore, if a Respondent was properly served, the facts alleged by the Complainant are admitted against the defaulting Respondent.

TSCA FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a), and based upon the entire Record, I make the following findings and conclusions of law:

1. Complainant is the United States Environmental Protection Agency, Region 1.
2. Respondent is Build-It Bros.

Service of the Complaint

3. The Complaint was sent by certified mail, return receipt requested, to Respondent on or about September 30, 2019.
4. The unopened Complaint was returned by the U.S. Post Office to EPA as unclaimed.
5. EPA resent the Complaint package to Respondent and thereafter, received the return receipt indicating signature for delivery of the Complaint by Respondent on November 8, 2019. EPA filed a copy of this proof of service with the Regional Hearing Clerk on November 14, 2019.
6. Service was complete as to Respondent as of November 8, 2019.
7. Although Respondent initially engaged in settlement discussions with Complainant, Complainant has not, to date, received any substantive response, signature or other formal acceptance of settlement from Respondent.
8. In addition, Respondent and Complaint filed a Joint Motion for Extension of Time to Answer on December 5, 2019. I issued an Order on December 9, 2019 granting this extension. As a result, the

Order extended the deadline for Respondent to file an Answer until January 23, 2020. Since this deadline, however, Respondent has neither requested an additional extension of time nor filed a written Answer.

9. On July 14, 2020, Complainant filed a Motion for Default Order.

10. In accordance with 40 C.F.R. 22.17(a), Respondent is in DEFAULT and the facts alleged by Complainant shall be deemed admitted against Respondent.

Violations of the Toxic Substances Control Act Regulations

11. Congress passed the Residential Lead-Based Paint Hazard Reduction Act to ensure that lead-based paint hazards are taken into account during the renovation of homes and apartments. See Title IV- Lead Exposure Reduction Section, TSCA sections 401-411, 15 U.S.C. §§ 2681-2692.

12. 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.

13. 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.” As provided in 40 C.F.R. § 745.83, “renovation” includes removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)).

14. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), “target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). *See* 40 C.F.R. § 745.103.

15. 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. Section 745.107(a)(1) of the Disclosure Rule, 40 C.F.R. § 745.107(a)(1), requires a lessor to provide a lessee with an EPA-approved lead hazard information pamphlet entitled *Protect your Family from Lead in the Home* or an equivalent EPA-approved pamphlet before a lessee is obligated under a contract to lease target housing.

16. Respondent is a Maine limited liability company with its principal business offices located at 38 Mussey Road in Scarborough, Maine, and is a “firm” as defined at 40 C.F.R. § 746.83. Respondent provides residential renovation services in and around the Portland, Maine area.

17. In January and February 2019, Respondent performed renovations, including the removal of old exterior porch components, repairs, installation of new porches and components, and painting and painting-related activities, at a multi-unit residential property located at 613 Washington Avenue in Portland, Maine (“Subject Property”). The Subject Property, constructed in or around the 1920s, was “target housing,” as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Respondent’s exterior work at the Subject Property constituted a “renovation” within the meaning of 40 C.F.R. § 745.83, and a renovation for compensation within the meaning of TSCA Section 406(b), 15 U.S.C. § 2686(b), and 40 C.F.R. § 745.103.

18. The work done by Respondent in January and February 2019 at the Subject Property (the “Subject Renovation”) came to the attention of EPA through a complaint of improper work practices during the Subject Renovation, which involved the disturbance of over 20 square feet of exterior painted surface, including the demolition of painted surface areas, sanding and/or scraping that can generate paint chips, debris, and dust.

19. On February 5, 2019, an authorized EPA inspector conducted a records inspection of Respondent with Mr. David Magee, its principal, at the offices of the Maine Department of Environmental

Protection in Portland, Maine. Later that same day, the EPA inspector conducted a compliance inspection at the Subject Property and observed the exterior conditions of the Subject Renovation. During the February 5, 2019 inspections and subsequent EPA investigation, EPA sought records and other information relative to Respondent's compliance with RRP Rule requirements during the Subject Renovation.

20. As the result of these inspections, EPA determined that Respondent had not obtained certification to perform renovation activities at the Subject Property.

21. As the result of these inspections, EPA established that Respondent did not provide an EPA-approved pamphlet to the Subject Property owner or lessees.

22. As the result of these inspections, EPA determined that the renovation activities at the Subject Property were not performed by either a certified renovator or a person trained by a certified renovator.

23. As the result of these inspections, EPA established that Respondent did not cover the ground with impermeable material to collect falling paint debris from the Subject Renovation.

24. Respondent's failure to obtain certification to perform the Subject Renovation, as required by 40 C.F.R. §§ 745.81(a)(2) and 745.89(a), constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

25. Respondent's failure to provide an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. §§ 745.84(a)(1) and 745.84(a)(2), constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

26. Respondent's failure to ensure that renovation activities at the Subject Property were performed by either a certified renovator or a person trained by a certified renovator, as required by 40 C.F.R. §§ 745.89(d)(1) and 745.89(d)(2), constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

27. Respondent's failure to cover the ground with impermeable material to collect falling paint debris from the Subject Renovation, as required by 40 C.F.R. §§ 745.85(d)(3) and 745.85(a)(2)(ii)(C), constitutes a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

DETERMINATION OF THE TSCA PENALTY AMOUNT

Service to Respondent was complete on November 8, 2019. Because the deadline to file an Answer to the Complaint was extended until January 23, 2020, the Answer was due on or before this date. 40 C.F.R. § 22.15(a). As of the date Complainant filed the Motion for Default Order, July 14, 2020, Complainant had neither received an Answer nor received an additional request for an extension of time to file an Answer. Therefore, the facts alleged by the Complainant shall be deemed admitted against Respondent, and the Respondent may be found in default. 40 C.F.R. § 22.17(a).

Section 16(a) of TSCA authorizes the assessment of a civil penalty up to \$25,000 per day for each violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act, 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Penalty Inflation Rule"), 40 C.F.R. Part 19, each TSCA violation that occurs after December 6, 2013 is subject up to \$37,500 per violation. 78 Fed. Reg. 66643 (November 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461 note and the Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$39,873 for each violation that occurs after November 2, 2015 for penalties assessed on or after February 6, 2019. 84 Fed. Reg. 2056 (February 6, 2019), 84 Fed. Reg. 5955 (February 25, 2019).

Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to consider the following factors in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation of violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and

other such matters as justice may require. In addition, to assess a penalty for alleged violations of the RRP Rule, EPA must take into account the particular facts and circumstances of each case with specific reference to EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("ERPP").

The ERPP sets forth EPA's analysis of the TSCA statutory factors as they apply to, *inter alia*, violations of the RRP Rule and provides a calculation methodology for applying the statutory factors to particular cases. ERPP at 8. Under the ERPP, there are two components of a penalty calculation, namely (1) a determination of a gravity-based penalty based on the nature, circumstances, and extent of harm that may result from a respondent's violations, and (2) an upward or downward adjustments of the gravity-based penalty component in light of a respondent's ability to pay the penalty, effect of the penalty on a respondent's ability to continue to do business, any history of prior such violations, the degree of a respondent's culpability, and such other matters as justice may require. ERPP at 9.

The gravity-based penalty component is determined by considering the nature and circumstances of a violation and the extent of harm that may result from a violation. The essential character of a violation is characterized as being of a "chemical control," "control-associated data gathering," or "hazard assessment" nature. ERPP at 14. A chemical control requirement is one which is "aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators and abatement contractors." *Id.* Violations of the RRP Rule are usually characterized as "chemical control" in nature. A "hazard assessment" requirement is designed to provide owners and occupants of target housing, among others, with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid the hazards. *Id.* The

classification of the nature of a violation has a direct impact on the measures used to determine the circumstance and extent of harm classifications of a violation under the ERPP. ERPP at 14-15.

The circumstance level reflects the probability that an owner or occupant of target housing will suffer harm based on a particular violation. "[T]he greater the deviation from the regulations, the greater the likelihood that people will be uninformed about the hazards associated with lead-based paint and any renovations, that exposure will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the renovation/abatement work is completed." ERPP at 15. Under the ERPP, circumstance levels range from a 1 to 6, with Levels 1 and 2 having the highest probability of harm, Levels 3 and 4 posing a medium probability of harm, and Levels 5 and 6 posing a low probability of harm. ERPP at 15-16. Appendix A of the ERPP sets forth the circumstance levels for particular violations of the RRP. ERPP at A-1 to A-10.

The extent of harm level of a violation may be characterized as either Major, Significant, or Minor, depending on the degree, range and scope of a violation's potential for childhood lead poisoning. ERPP at 16-17. Major violations pose the potential for serious damage to human health and the environment. Significant violations have the potential for significant damage to human health and the environment. Finally, Minor violations pose the potential for lesser damage to human health and the environment. ERPP at 16. For housing units occupied by a pregnant woman and/or a child of less than six years of age, a Major classification is deemed appropriate. ERPP at 17. For housing units occupied by a child between six years of age and eighteen years of age, the extent of harm for violations under the ERPP is Significant. *Id.* For housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm is Minor. *Id.*

Note, however, that the initial calculation of the gravity-based penalty under the ERPP does not include an adjustment for inflation. To account for inflation, the initial penalty calculation must then be

adjusted through the use of the appropriate multiplier. The appropriate multiplier is found in Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule (“Inflationary Guidance”) (available at <https://www.epa.gov/enforcement/amendments-epas-civil-penalty-policies-account-inflation-effective-january-15-2018-and>), which specifies a multiplication factor of 1.03711 for most RRP violations. Inflationary Guidance at p. 13. Note, however that a multiplication factor of 1.58136 must be applied to hazard assessment violations. Inflation Guidance at p. 14.

In addition, EPA has issued a Graduated Penalty Approach Policy for Small-Scale Businesses (GPA Policy). Appendix E to the ERPP. Pursuant to this policy, the penalty for small-scale respondents with a pre-tax gross annual revenue of no more than \$2,000,000 or net worth of no more than \$600,000 may, after consideration of the facts and circumstances of the matter, be adjusted downward. In particular, the GPA Policy allows for the use of a multiplier to reduce the penalty calculated under the ERPP penalty matrix. The formula for determining this adjustment is as follows:

- First, identify the ERPP gravity-based penalties for each violation.
- Then, determine the multiplier by dividing the respondent’s gross annual revenue by 2,000,000 or divide the respondent’s net worth by \$600,000. The resulting quotient is the GPA multiplier.
- Finally, apply the GPA multiplier to the ERPP penalty to obtain the GPA-generated penalty.

Appendix E to the ERPP at p. 2.

Analysis of the Penalty Calculation

Pursuant to Rule 22.17(c) of the Consolidated Rules, 40 C.F.R. § 22.17(c), with regard to the issuance of a Default Order, the relief proposed in the Complaint on Motion for Default shall be ordered

unless it is "clearly inconsistent with the record of the proceeding or the Act." This provision also states that if a Default Order resolves all outstanding issue and claims in a proceeding, it shall constitute an Initial Decision.

For purposes of calculating a civil penalty to be assessed in an Initial Decision, a Presiding Officer is required to determine the penalty based on the evidence in the record of the case and in accordance with any penalty criteria set forth in the underlying statute. 40 C.F.R. § 22.27(b). A Presiding Officer is also required to consider any applicable civil penalty guidelines. *Id.*

The following analysis of the penalty calculation for this matter is based upon the statutory factors, case-specific facts, the ERPP, and the GPA Policy. The ERPP and GPA Policy provide rational, consistent and equitable methodologies for applying the TSCA statutory factors to the facts and circumstances of this matter, while taking into account Respondent's small size and financial condition.

Count I: Failure to Obtain Firm Certification

Pursuant to 40 C.F.R. § 745.81(a)(2), no firm may provide renovations in target housing for compensation without certification from EPA. Under § 745.89(a), firms that provide renovations must apply to EPA for certification to perform renovations. From January through February 2019, Respondent conducted renovation activities at the Subject Property without obtaining certification from EPA as required under 40 C.F.R. § 745.89(a). As a result, Respondent's performance of work without a firm certification was a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) and a prohibited act under TSCA Section 409, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87. A penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

In accordance with the ERPP, the failure of a firm that performs renovations for compensation to obtain initial certification is assigned a Circumstance Level of 3a (medium). ERPP, Appendix A, page A-3. Because there were no occupants under the age of 18 in the Target Housing, it is appropriate to

assign a Minor extent of harm level to this violation. Accordingly, the ERPP Gravity-Based Penalty for a Minor, Level 3a violation is \$4,500. ERPP, Appendix B, page B-2. When this penalty is adjusted for inflation in accordance with the 1.03711 penalty adjustment required by the Inflationary Guidance, the penalty amount for this violation totals \$4,667.

I conclude that a \$4,667 penalty, which reflects the legal requirements and policy considerations discussed above, is an appropriate maximum penalty for Respondent's 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) violation.

Count II: Failure to Provide Lead Hazard Information Pamphlet

No more than sixty days before commencing renovation activities, firms must provide lead hazard information to a target housing unit owner in the form of an EPA pamphlet or EPA-approved pamphlet and obtain a written acknowledgement of receipt or a certificate of mailing at least seven days prior to the renovation. 40 C.F.R. §§ 745.84(a)(1) and (a)(2). Respondent's failure to provide an EPA pamphlet before commencing renovation activities constitutes a violation of 40 C.F.R. §§ 745.84(a)(1) and (a)(2) and a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87. Penalties for this violation may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

In accordance with the ERPP, the failure to provide the owner with a Pamphlet results in a high probability of impacting human health and the environment and is considered a Level 1b (high) violation. ERPP, Appendix A, page A-1. The appropriate extent of harm for Respondent's failure to provide a Pamphlet before conducting renovations for housing units that are not occupied by children less than eighteen years of age is Minor. Accordingly, the penalty for a Minor, Level 1b violation of 40 C.F.R. §§ 745.84(a)(1) and 745.84(a)(2) is \$2,580.¹ ERPP at Appendix B, p. B-1. In accordance with the

¹ Complainant applied the penalty for a Minor, Level 1b violation of 40 C.F.R. §§ 745.84(a)(1) and (a)(2) by applying the penalty amount found in the matrix for pre-January 12, 2009 violations (i.e., \$2,580). See ERPP at Appendix B, p. B-1. The reasoning for Complainant's use of the Penalty Matrix

1.58136 penalty adjustment required by the Inflationary Guidance for this hazard assessment violation, the adjusted violation amount totals \$4,080.

I conclude that a \$4,080 penalty, which reflects the legal requirements and policy considerations discussed above, is an appropriate maximum penalty for Respondent's 40 C.F.R. §§ 745.84(a)(1) and 745.84(a)(2) violation.

Count III: Failure to Ensure a Certified Renovator Performs or Directs Work

Firms that perform renovations must ensure that (1) all individuals performing renovation activities in target housing are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90, and (2) a certified renovator is assigned to each renovation and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90. 40 C.F.R. §§ 745.89(d)(1) and 745.89(d)(2). Respondent's failure to ensure that an individual performing renovation activities was either a certified renovator or trained by a certified renovator constitutes a violation of 40 C.F.R. §§ 745.89(d)(1) and 745.89(d)(2), and a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87. Penalties for this violation may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

In accordance with the ERPP, the Circumstance Level for violations of 40 C.F.R. §§ 745.89(d)(1) and 745.89(d)(2) is a Level 3a (medium) violation. For housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm is Minor. Accordingly, under the policy, a gravity-based penalty of \$4,500 should be assessed for this Minor, Level 3a violation.

for pre-January 12, 2009 violations rather than the matrix for post-January 12, 2009 violations is explained in Complainant's EPA Response to Supplemental Order to Show Cause. In light of Complainant's Response, I agree that the use of the \$2,580 penalty amount is appropriate and proper and does not cause unfair harm or prejudice to Respondent.

ERPP at Appendix B, p. B-2. In accordance with the 1.03711 penalty adjustment required by the Inflationary Guidance, the adjusted violation amount is \$4,667.

I conclude that a \$4,667 penalty, which reflects the legal requirements and policy considerations discussed above, is the appropriate maximum penalty for Respondent's 40 C.F.R. §§ 745.89(d)(1) and 745.89(d)(2) violation.

Count IV: Failure to Contain Exterior Work Area

Under 40 C.F.R. § 745.89(d)(3), firms that perform renovations must ensure that the work meets the work practice standards found at 40 C.F.R. § 745.85. Respondent's failure to meet these standards by failing to cover the ground with plastic sheeting or other disposable impermeable material extending ten feet or more beyond the surface requiring renovation so as to collect falling paint debris constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C), and a prohibited act under TSCA Section 409, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87. Penalties may be assessed pursuant to TSCA Section 16, 15 U.S.C. § 2615.

In accordance with the ERPP, the Circumstance Level for a 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) violation is Level 2a (medium). For housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm is Minor. Accordingly, under the policy, a gravity-based penalty of \$6,000 should be assessed for this Minor, Level 2a violation. ERPP at Appendix B, p. B-2. In accordance with the 1.03711 penalty adjustment required by the Inflationary Guidance, the adjusted penalty amount is \$6,223.

I conclude that a \$6,223 penalty, which reflects the legal requirements and policy considerations discussed above, is the appropriate maximum penalty for Respondent's 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) violation.

Complainant's Penalty Calculation

As discussed in detail above, by utilizing the penalty matrix in the ERPP, the proposed penalties for Counts I through 4 are as follows:

Count I - Failure to Obtain Firm Certification = \$4,500
Count II - Failure to Provide the EPA-approved Pamphlet = \$2,580
Count III - Failure to Ensure a Certified Renovator Performs or Directs Work = \$4,500
Count IV - Failure to Contain Exterior Work Area = \$6,000

In accordance with the EPA inflationary guidance in effect at the time the Complaint was filed, a multiplication factor of 1.03711 must be applied to the penalty amounts of Counts I, III, and IV. A

multiplication factor of 1.58136 penalty adjustment must be applied to the penalty amount of Count II.

Accordingly, the total penalty for each count increases to the following amounts:

Count I - Failure to Obtain Firm Certification = \$4,667
Count II - Failure to Provide the EPA-approved Pamphlet = \$4,080
Count III - Failure to Ensure a Certified Renovator Performs or Directs Work = \$4,667
Count IV - Failure to Contain Exterior Work Area = \$6,223
Total Penalty = \$19,637

Note, however, that because Respondent had a pre-tax gross annual revenue of less than \$2,000,000, the total penalty can be adjusted downward in accordance with the GPA Policy. In particular, according to Attachment 5 of Complainant's Motion in Support of Default Order, Respondent's most recent annual revenue estimate totaled \$148,327. Accordingly, the multiplier that may be applied under the GPA Policy is calculated as follows:

- Divide the respondent's gross annual revenue by 2,000,000. The resulting quotient is the GPA multiplier. Accordingly, $\$148,327 \div \$2,000,000 = .0741635^2$
- Apply the GPA multiplier to the ERPP penalty to obtain the GPA-generated penalty. Accordingly, $\$18,502 \times .0741635 = \$1,456$

² Complainant applied a GPA multiplier of .074635 to the EERP penalty. The correct multiplier is .0741635.

As noted above, the Consolidated Rules provide that upon issuing a default order “[t]he relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or [the statute authorizing the proceeding].” 40 C.F.R. § 22.17(c). I find the rationale for the penalty calculation, as set forth in the Complaint and in the Complainant’s Motion for Default, provides the factual, legal, and policy bases for the assessed penalty and is consistent with the record of this proceeding. I therefore assess a total penalty of \$1,456.00.

ORDER

In accordance with Section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17, and based on the record, the findings of fact and conclusions of law set forth above. I hereby find that Respondent is in **DEFAULT** and liable for a total penalty of **\$1,456.00**.

IT IS THEREFORE ORDERED that Respondent, Build-It Bros., shall, within thirty days after this Order becomes final under 40 C.F.R. § 22.27(c), submit by cashier’s or certified check, payable to the United States Treasurer, payment in the amount of **\$1,456.00** in one of the following ways:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

OVERNIGHT MAIL:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

ON-LINE PAYMENT:

There is now an On-Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

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

Additional payment guidance is available at <https://www2.epa.gov/financial/makepayment>.

Respondent shall note on the check the title and docket number of this Administrative action.

Respondent shall serve photocopies of any check or written notification confirming electronic fund transfer or on-line payment to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Five Post Office Square
Mail Code 04-6
Boston, MA 02190-3912
Santiago.wanda@epa.gov

and

Hugh Martinez
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Five Post Office Square, Suite 100
Boston, MA 02190-3912
Martinez.hugh@epa.gov

Each party shall bear its own costs in bringing or defending this action.

Should Build-It Bros. fail to pay the penalty specified above in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will be assessed at the rate of the United States Treasury tax and loan rate, in accordance with 40 C.F.R. § 102.13(e).

This Default Order constitutes an Initial Decision, in accordance with 40 C.F.R. § 22.27(a) of the Consolidated Rules. This Initial Decision shall become a Final Order forty-five days after its service upon a party, and without further proceedings unless: (1) a party moves to reopen the hearing within twenty days after service of this Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) a party appeals the Initial Decision to the Environmental Appeals Board within thirty days after this Initial Decision is served upon the parties; (3) a party moves to set aside a Default Order that constitutes an Initial Decision; or (4) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

Within thirty days after the Initial Decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. 40 C.F.R. § 22.27(a). If a party intends to file a notice of appeal to the Environmental Appeals Board, it should be sent to the following address:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (MC 1103B)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Where a Respondent fails to appeal an Initial Decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30 of the Consolidated Rules, and that Initial Decision becomes a Final Order pursuant to 40 C.F.R. § 22.27(c) of the Consolidated Rules, Respondent waives its right to judicial review.

SO ORDERED this 29th day of December 2020.

LeAnn Jensen
EPA Region 1 Regional Judicial Officer/Presiding Officer