

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
BUILD-IT BROS., LLC)	
38 Mussey Road)	Docket No.
Scarborough, Maine 04074,)	TSCA-01-2019-0055
)	
Respondent.)	
)	
Proceeding under Section 16(a) of the)	
Toxic Substances Control Act,)	
15 U.S.C. § 2615(a).)	
_____)	

PROPOSED DEFAULT ORDER

I. Introduction

This proceeding was commenced on September 30, 2019, with the filing of a Complaint by the Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), against Respondent, Build-It Bros., LLC (“Respondent”). The Complaint charges Respondent with four violations of Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, and the federal regulations promulgated thereunder set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting Rule” or “RRP Rule”). The Complaint proposed a penalty of up to the statutory maximum for each of the alleged violations.

Service of the Complaint was completed on November 8, 2019. To date, Respondent has not filed an Answer and has not requested any further extension of time for filing an Answer beyond the extended deadline of January 23, 2020, as set forth in my December 9, 2019 Order granting the parties’ Joint Motion for Extension of Time to Answer. For the reasons set out below, Respondent is found to be in default pursuant to 40 C.F.R. 22.17(a) of the Rules of Practice and is assessed the proposed penalty of \$1,456.

II. Findings of Fact and Conclusions of Law

1. The Complainant is EPA.
2. The Respondent is a Maine limited liability company that provides residential renovation services in and around the Portland, Maine area. Respondent’s business address is 38 Mussey Road in Scarborough, Maine.
3. 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 at 613 Washington

Avenue in Portland, Maine (“Subject Property”), which was constructed in or around the 1920s.

4. The renovations at the Subject Property came to the attention of EPA through a complaint concerning improper work practices, including failure to contain exterior work areas.

6. On February 5, 2019, an EPA inspector conducted a records inspection of Build-It Bros., LLC with its principal, Mr. David Magee, at Maine Department of Environmental Protection offices on 312 Canco Road in Portland, and later, a compliance inspection at the Subject Property to observe conditions there (collectively, the “Inspections”).

7. At the time of the Inspections, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

8. At the time of the Inspections, Mr. Magee was a “renovator” as defined in 40 C.F.R. § 745.83.

9. At the time of the Inspections, Mr. Magee was not certified as a renovator under the RRP Rule, nor was Respondent certified as a firm under the RRP Rule.

10. Respondent’s work at the Subject Property constituted a “renovation,” as defined in 40 C.F.R. § 745.83.

11. Respondent’s work at the Subject Property constituted a “renovation for compensation” subject to the RRP Rule. *See* 40 C.F.R. § 745.82.

12. The Subject Property, having been built before 1978, was “target housing,” as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the Subject Property does not satisfy the requirements for an exemption to the provisions of TSCA (including 15 U.S.C. § 2681(17)) or the RRP Rule (including 40 C.F.R. § 745.82).

13. On September 30, 2019, EPA Region 1 issued to Respondent by Certified Mail - Return Receipt Requested, a “Complaint and Notice of Opportunity for Hearing” (“Complaint”) alleging four counts of RRP Rule violations. After receiving the unopened Complaint package returned by the U.S. Postal Service as “unclaimed,” EPA resent the Complaint package to Respondent and, thereafter, received a signed return receipt showing delivery to Respondent, on November 8, 2019, which proof of service was filed with the Regional Hearing Clerk, on November 14, 2019. Accordingly, service was complete on November 8, 2019.

14. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply for EPA certification to perform renovations. Under 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.

15. At the time of the renovation at the Subject Property, Respondent was not a certified firm under the RRP Rule. In performing an exterior renovation without certification from EPA under

§ 745.89 at the Subject Property, Respondent violated 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1). None of the exceptions identified in 40 C.F.R. § 745.82 applies to the renovation at the Subject Property.

16. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than 60 days before beginning the renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the residential unit with the EPA-approved *Renovate Right* pamphlet and obtain written acknowledgement of receipt of the pamphlet. Additionally, pursuant to 40 C.F.R. § 745.84(a)(2), if the owner does not occupy the dwelling unit, the firm performing the renovation must provide an adult occupant of the unit with the pamphlet and obtain from the adult occupant a written acknowledgment that the occupant received the pamphlet or certify in writing that the pamphlet was delivered to the dwelling and that the firm performing the renovation had been unsuccessful in obtaining a written acknowledgement from the adult occupant, or obtain a certificate of mailing at least seven days prior to the renovation.

17. Before commencing the renovation of the Subject Property, Respondent did not provide the EPA-approved *Renovate Right* pamphlet to the owner or any adult occupants. Respondent's failure to provide the pamphlet to the owner and adult occupants of the Subject Property is a violation of 40 C.F.R. § 745.84(a) and Section 409 of TSCA.

18. Pursuant to 40 C.F.R. § 745.89(d)(1) and (2), firms performing renovations must ensure that (1) all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90; and (2) a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

19. At no time before or during the renovation of the Subject Property was Respondent or anyone on Respondent's work crew performing the renovation activities either a certified renovator or trained by a certified renovator, as required by 40 C.F.R. § 745.90, nor did Respondent assign a certified renovator to the renovation, as required under 40 C.F.R. §§ 745.89(d)(1) and (d)(2). Respondent's failure to ensure that each individual performing renovation activities at the Subject Property was either a certified renovator or trained by a certified renovator, and failure to ensure that a certified renovator was assigned to the renovation at the Subject Property constituted a violation of 40 C.F.R. §§ 745.89(d)(1) and (2) and Section 409 of TSCA.

20. 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)(ii)(C), before beginning an exterior renovation, a 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.

21. During the renovation of the exterior of the Subject Property, Respondent did not ensure that the ground was covered with impermeable material sufficient to collect falling paint debris from the Subject Property, in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C). The failure of

Respondent to ensure that the ground at the Subject Property was covered with impermeable material in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), constitutes a violation of 40 C.F.R. § 745.89(d)(3), 40 C.F.R. § 745.85(a)(2)(ii)(C), and Section 409 of TSCA.

III. Determination of Civil Penalty Amount

22. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default “[t]he relief proposed in the complaint ... shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c).

23. Section 16 of TSCA authorizes the assessment of a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA. This maximum amount was adjusted up to \$40,576 by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, Section 701 (Nov. 2, 2015), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. At the time the Complaint in this matter was issued, the maximum penalty for a violation of Section 409 of TSCA was \$39,873.

24. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that the following factors be considered in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation or 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.

25. EPA has issued guidelines for penalties under EPA’s August 2010 Interim Final Policy entitled, *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (the “LBP Consolidated ERPP”) (revised April 2013), and under EPA’s September 2019 *Lead-Based Paint Graduated Penalty Approach Policy for Small-Scale Businesses* (“GPA Policy”).

26. According to the Complaint and Exhibit 7 to Complainant’s Memorandum in Support of Motion for Default Order, Complainant considered the potential for harm resulting from Respondent’s violations of the RRP Rule to be “minor” because there were no children under the age of 18 or pregnant women living in the target housing at the time of the violations. With regard to the “circumstances” of the violations, the First and Third Counts alleged in the Complaint were considered to have a medium probability of impacting human health and the environment and the Second and Fourth Counts were considered to have a high probability of impacting human health and the environment. With respect to ability to pay, Respondent provided information indicating a gross annual revenue estimate of approximately \$148,327. Complainant did not include in the Complaint or the Penalty Summary (Exhibit 7 to the Memorandum in Support of Motion for Default Order Complaint) information with respect to any history of prior violations, degree of culpability, or other such matters as justice may require. Complainant applied the Graduated Penalty Approach Policy, dated September 20, 2019, to the penalty. Based on this information, I have determined that the proposed penalty of \$1,456 is the appropriate civil penalty to be assessed against Respondent in that it is neither clearly

inconsistent with the record of the proceeding nor clearly inconsistent with TSCA.

27. In doing so, I have taken into account the nature, circumstances, extent, and gravity of the violations and, with respect to Respondent, the 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, which are all factors identified by TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2).

28. In assessing this penalty, I find persuasive the rationale for the calculations of the assessed penalty set forth in the Complaint, Attachment I of the Complaint, and in the Complainant's Memorandum in Support of Motion for Default Order filed in this proceeding and incorporate such rationale by reference into this Order.

IV. Order

1. For failing to file an Answer to the Complaint, Respondent is hereby found in DEFAULT.

2. Respondent, Build-It Bros., LLC, is assessed a civil administrative penalty in the amount of \$1,456.

3. Payment of the full amount of this civil penalty shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below. Payment shall be made by submitting a bank, certified or cashier's check in the amount of \$1,456, payable to "Treasurer, United States of America."

The check should also note the docket number of this matter (TSCA-01-2019-0055), and should be forwarded to:

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

4. A transmittal letter identifying the subject case and EPA docket number as well as Respondent's name and address, must accompany the check.

5. If Respondent fails to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. *See* 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

6. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision,

pursuant to 40 C.F.R. § 22.30(b).

LeAnn W. Jensen
Regional Judicial Officer

Dated: _____