

EXHIBIT 5
PENALTY SUMMARY

This Penalty Summary provides an explanation for Complainant’s proposed penalty calculation to support the Motion for Default Order in the administrative penalty action against Build-It Bros., LLC (“Build-It”) of Scarborough, Maine: *Build-It Bros., LLC*, TSCA-01-2019-0055.

The Complaint seeks to assess a civil penalty of not more than the statutory maximum for each of four alleged violations of the Renovation, Repair and Painting (“RRP”) Rule. This Penalty Summary specifies a proposed penalty amount for each of the alleged violations and explains how each amount was calculated, as required by the Part 22 Rules. The proposed penalty is based, in part, on information Respondent provided on its financial condition. The proposed penalty is calculated using 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* (“RRP Penalty Policy”) (revised April 2013)¹ as well as the September 20, 2019 Graduated Penalty Approach Policy for Small-Scale Businesses (“GPA Policy”),² Appendix E to the RRP Penalty Policy. The following is a breakdown of the penalty:

FIRST COUNT

40 C.F.R. § 745.89(a) requires firms that perform, offer or claim to perform renovations for compensation, must obtain initial certification from EPA, pursuant to 40 CFR § 745.81(a)(2).

Circumstance Level: The failure to obtain RRP Rule firm certification results in a *lesser probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R § 745.89(a) are assigned a *Circumstance Level 3a*.

Extent of Harm: The RRP Penalty Policy 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 there. 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. In this case, since there was no one under 18 years old known to be living in the affected units at the time of the violation, the violation warrants a *minor* extent factor under the RRP Penalty Policy.

First Count Penalty

*In January 2019, Respondent failed to obtain an RRP Rule firm certification before offering and performing renovations at the Subject Property (613 Washington Avenue in Portland, ME). One violation, adjusted for inflation³..... **\$4,667***

¹ Available at <https://www.epa.gov/enforcement/revised-interim-final-consolidated-enforcement-response-and-penalty-policy-pre>.

² Available at <https://www.epa.gov/enforcement/lead-based-paint-graduated-penalty-approach-policy>.

³ As per applicable EPA inflationary guidance in effect at the time the Complaint was filed on September 30, 2019, effective January 15, 2018 and available at <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications#penalty> (specifies multiplication factor of 1.03711 for RRP Rule violations).

SECOND COUNT

40 C.F.R. §§ 745.84(a)(1) and (a)(2) require that RRP firms provide a “Renovate Right” pamphlet to the owner and adult occupants of any residential dwelling unit of target housing before beginning renovations in the unit.

Circumstance Level: The failure to provide a pamphlet prior to all renovations results in a *higher probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R § 745.84(a)(2) are assigned a *Circumstance Level 1b*.

Extent of Harm: This violation warrants a *minor* extent factor under the RRP Penalty Policy. [See Extent of Harm description for First Count.]

Second Count Penalty

Respondent failed to provide the pamphlet to the owner and adult occupants before beginning renovations, in January 2019, at the Subject Property.

One violation, adjusted for inflation⁴ **\$4,080**

THIRD COUNT

40 C.F.R. §§ 745.89(d)(1) and (d)(2) require firms to ensure individuals performing renovations are certified or trained by someone who is certified as well as to assign a certified renovator to each renovation to discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

Circumstance Level: The failure to ensure that trained workers perform renovations and that a certified renovator is assigned to each renovation results in a *lesser probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R §§ 745.89(d)(1) and (d)(2) are assigned a *Circumstance Level 3a*.

Extent of Harm: This violation warrants a *minor* extent factor under the RRP Penalty Policy. [See Extent of Harm description for First Count.]

Third Count Penalty

In January and February 2019, Respondent failed to assign an RRP-certified renovator to the renovations performed at the Subject Property.

One violation, adjusted for inflation⁵ **\$4,667**

FOURTH COUNT

40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) require that RRP firms contain the exterior work area before beginning and during the renovation. Firms must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. For exterior renovations, firms 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. Ground containment measures may stop at the edge of the vertical barrier when using vertical containment system.

⁴ See fn. 3.

⁵ See fn. 3.

Circumstance Level: The failure to assign a certified renovator to all renovations results in a *higher probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) are assigned a *Circumstance Level 2a*.

Extent of Harm: This violation warrants a *minor* extent factor under the RRP Penalty Policy. [See Extent of Harm description for First Count.]

Fourth Count Penalty

Respondent failed to cover the ground with plastic prior to and during renovations performed, in January and February 2019, at the Subject Property.

One violation, adjusted for inflation⁶ **\$6,223**

Total Penalty for All Counts = \$19,637

Revised Penalty after Application of GPA Policy

As part of EPA settlement discussions, EPA invites Respondents to provide any relevant facts or other information that they believe should be considered in calculating an appropriate penalty. Among other things, this may include, where applicable, the issue of whether payment of a proposed penalty is likely to cause severe financial hardship such that it raises legitimate issues of ability to pay. Based on discussions with Build-It Bros., LLC founder and principal, David Magee, resolution of this matter at a lower penalty amount is warranted, in part, based on Respondent’s status as a small-scale business. After reviewing Respondent’s available financial information and applying the GPA Policy using Respondent’s most recent gross annual revenue estimate (\$148,327), the above penalty of \$19,637 is recalculated to \$1,456, under the GPA Policy through use of a GPA multiplier of 0.074635. The specific calculation is as follows:

$$\begin{aligned} \$148,327 \div \$2,000,000 &= 0.074635 \text{ (GPA multiplier)} \\ 0.074635 \times \$19,637 &= \mathbf{\$1,456} \text{ (revised GPA penalty)} \end{aligned}$$

Conclusion: For the reasons specified above and in light of case-specific legal and factual considerations outlined herein and in the Memorandum in Support of Motion for Default Order, EPA finds that the assessment of a \$1,456 penalty against Respondent, Build-It Bros., LLC, is reasonable and appropriate under the circumstances.

⁶ See fn. 3.