



**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**REGION 1 – NEW ENGLAND**

5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

HUGH W. MARTINEZ  
dir 617-918-1867  
[Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov)

Office of Regional Counsel  
EPA Region 1

RECEIVED

SEP 30 2019

EPA ORC  
Office of Regional Hearing Clerk

September 30, 2019

**BY HAND**

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

Re: In the Matter of Build-It Bros., LLC, Docket No. TSCA-01-2019-0055

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Complaint and Notice of Opportunity for Hearing, which seeks penalties for alleged violations of Sections 15 and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2689, and regulations promulgated under TSCA known as the Renovation, Repair and Painting Rule.

Thank you for your attention to this matter.

Sincerely,

  
Hugh W. Martinez, Senior Enforcement Counsel  
Counsel for Complainant

Enclosures

cc: David Magee, Build-It Bros., LLC  
John Bucci, Maine DEP  
M. Molly Magoon, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND**

In the Matter of: )  
)  
Build-It Bros., LLC )  
38 Mussey Road )  
Scarborough, ME 04074 )  
)  
Respondent. )  
)  
*Proceeding under Section 16(a) of the* )  
*Toxic Substances Control Act.* )  
*42 U.S.C. § 2615(a).* )  
)

Docket No.  
TSCA-01-2019-0055

**COMPLAINT  
AND  
NOTICE OF OPPORTUNITY  
FOR HEARING**

RECEIVED

SEP 10 2019

EPA ORC

Office of Regional Hearing Clerk

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued by Complainant, the U. S. Environmental Protection Agency (“EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), regulations implementing TSCA at 40 C.F.R. § 745.87, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”), Region 1 – New England.

2. The Respondent in this action, Build-It Bros., LLC (“Build-It Bros.” or “Respondent”) of Scarborough, Maine, is hereby notified of Complainant’s determination that it has violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, including 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. Part 745, Subpart L, as amended (collectively referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”). Respondent is also hereby notified that Complainant seeks civil

penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Sections 15 or 409 are subject to the assessment by Complainant of civil and/or criminal penalties.

# **I. STATUTORY AND REGULATORY AUTHORITY**

3. 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. Among the stated purposes of the Act is ensuring that the existence of lead-based paint hazards be taken into account in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692.

4. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA [*Lead-Based Paint Activities Training and Certification – Regulations*], 15 U.S.C. § 2682(a), which are set forth at 40 C.F.R. Part 745, Subpart L [*Lead-Based Paint Activities*, 40 C.F.R. §§ 745.220-745.239], commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule.” In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA [*Lead Hazard Information Pamphlet – Renovation of Target Housing*], 15 U.S.C. § 2686(b), which are set forth at 40 C.F.R. Part 745, Subpart E [*Residential*

*Property Renovation*, 40 C.F.R. §§ 745.80-745.92], commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule.”

5. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L, now commonly referred to as the “RRP Rule.”

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

7. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act and the RRP Rule is “target housing,” 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.

8. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17) and 40 C.F.R. § 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.



9. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either a single-family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

10. For purposes of complying with Section 406(b) of TSCA and the RRP Rule, pursuant to 40 C.F.R. § 745.83, the term “pamphlet” as used herein means the EPA-approved pamphlet developed under TSCA Section 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” (EPA # 740-K-10-001), or any State or Tribal pamphlet developed for the same purpose and approved by EPA under 40 C.F.R. § 745.326.

11. Pursuant to 40 C.F.R. § 745.83, the term “firm” means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

12. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an “abatement,” as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal or modification 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)); the removal of building components (e.g., walls, ceiling, plumbing, windows); weatherization projects (e.g. cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

13. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

14. Pursuant to 40 C.F.R. § 745.83, the term “renovator” means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or by an EPA-authorized State or Tribal program.

15. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this Complaint, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;

- ii. Provide the EPA-approved pamphlet to the owner and adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- iii. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation;
- iv. For exterior renovations, sufficiently cover the ground with plastic or other disposable impermeable material to collect falling paint debris; and,
- v. Retain all records necessary to demonstrate compliance with the same.

*See* 40 C.F.R. §§ 745.81(a)(2), 745.84(a)(1), 745.84(a)(2), 745.89(d)(1)-(5), 745.85(a)(2)(ii)(C), and 745.86(a) and (b).

16. 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 records required by the RRP Rule, or to make them available, is a violation of Sections 15 and 409 of TSCA.

17. 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.

18. 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 ("Debt Collection Improvement

Act”), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (“Penalty Inflation Rule”), each such TSCA violation that occurs 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). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (“2015 Inflation Adjustment Act”), and the 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 (Feb. 6, 2019) and 84 Fed. Reg. 5955 (Feb. 25, 2019).

## **II. GENERAL ALLEGATIONS**

19. Respondent, Build-It Bros., LLC, is a Maine limited liability company, organized in or around 2018, with its principal business offices located at 38 Mussey Road in Scarborough, Maine.

20. Build-It Bros. provides residential renovation services in and around the Portland, Maine area. Build-It Bros. specializes in carpentry, decks, roofing, and siding and operates under the direction of its owner and manager, David Magee.

21. Beginning in January 2019, and continuing into January 24 and 25, 2019, then further into early February 2019, Respondent performed renovation activities which constituted a “renovation” within the meaning of 40 C.F.R. § 745.83 at a multi-unit residential property (3 units) located at 613 Washington Avenue in Portland, Maine (hereinafter, the “Washington Ave.



Renovation”).

22. The Washington Ave. Renovation involved the removal of old exterior porch components, repairs, and installation of new porches and components.

23. The multi-unit residential property located at 613 Washington Avenue in Portland, Maine (the “Property”) is privately owned and was built in or around the 1920s.

24. On or about February 5, 2019, a duly-authorized EPA inspector conducted a records inspection of Build-It Bros. with David Magee, principal of Build-It Bros., at the offices of the Maine Department of Environmental Protection (“Maine DEP”) at 312 Canco Road in Portland, Maine. Later in the day on February 5, 2019, the EPA inspector conducted a compliance inspection at the Washington Ave. Renovation, and observed the exterior conditions at the Property.

25. During the February 5, 2019 inspections at the Maine DEP offices and at the Property, EPA sought records and other information relative to Respondent’s compliance with RRP Rule requirements.

26. The Washington Ave. Renovation performed by Respondent, as described in Paragraphs 21 and 22 above, constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule. The Washington Ave. Renovation does not fall within any exemption set forth in 40 C.F.R. § 745.82.

27. The Property described in Paragraph 23 above that is associated with the violations alleged in this Complaint is “target housing” as defined in Section 401(17) of TSCA

and 40 C.F.R. § 745.103. Neither the Property nor any of the residential units therein satisfies the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).

28. At all times relevant to the violations alleged in this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 746.83.

### **III. VIOLATIONS**

29. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from Respondent during, or as a result of, the inspections and EPA’s investigation of the facts and circumstances underlying the violations.

#### **FIRST COUNT**

##### *Failure to Obtain Firm Certification*

30. Paragraphs 1 through 29, above, are incorporated by reference as if fully set forth herein.

31. Pursuant to 40 C.F.R. § 745.81(a)(2), no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under 40 C.F.R. § 745.82. Pursuant to 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

32. Beginning in January 2019, and continuing into January 24 and 25, 2019, then further into early February 2019, Respondent conducted the Washington Ave. Renovation which involved the disturbance of over twenty (20) square feet of exterior painted surface and, in

particular, demolition of painted surface areas, sanding and/or scraping, that can generate paint chips, debris, and dust.

33. The Washington Ave. Renovation did not qualify as minor maintenance and repair activities under 40 C.F.R. § 745.83, nor was it exempt under 40 C.F.R. § 745.82.

34. At no time before or during the Washington Ave. Renovation had Build-It Bros. obtained initial EPA-certification as a firm under 40 C.F.R. § 745.89(a).

35. Build-It Bros.'s performance of the Washington Ave. Renovation without being certified as a firm under 40 C.F.R. § 745.89 constitutes a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a), and TSCA Section 409.

36. The above-referenced violation alleged in this First 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, 15 U.S.C. § 2615.

#### **SECOND COUNT**

##### *Failure to Provide Pre-Renovation Education Information*

37. Paragraphs 1 through 36, above, are incorporated by reference as if fully set forth herein.

38. Pursuant to 40 C.F.R. § 745.84(a)(1) and (a)(2), with respect to a rented residential dwelling unit in target housing, a firm must provide lead hazard information in the form of an EPA pamphlet to the owner and a tenant or adult occupant no more than 60 days prior to performing renovation activities therein, and also, obtain a written acknowledgement of receipt or certificate of mailing such pamphlet, in the manner specified at 40 C.F.R. §§

745.84(a)(1)(i) or (a)(1)(ii) and 745.84(a)(2)(i) or (a)(2)(ii).

39. Build-It Bros. did not provide an EPA-approved pamphlet to the owner or any tenant or adult occupants before commencing the Washington Ave. Renovation.

40. Respondent's failure to distribute a lead hazard information pamphlet to the owner and any adult occupants of the dwelling units affected by the Washington Ave. Renovation constitutes a violation of 40 C.F.R. § 745.84(a)(1) and (a)(2), and Section 409 of TSCA.

41. The above-listed violation alleged in this Second 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.

**THIRD COUNT**

*Failure to Ensure Certified Renovator Performs or Directs Work*

42. Paragraphs 1 through 41, above, are incorporated by reference as if fully set forth herein.

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

44. At no time before or during the Washington Ave. Renovation was any person



performing the renovation activities either a certified renovator or trained by a certified renovator, nor was a certified renovator assigned to the Washington Ave. Renovation, as specified under 40 C.F.R. § 745.89(d)(1) and (d)(2).

45. Build-It Bros.'s failure to ensure that an individual performing renovation activities at the Washington Ave. Renovation was either a certified renovator or trained by a certified renovator, and its failure to ensure that a certified renovator was assigned to the Washington Ave. Renovation to carry out all of the responsibilities in 40 C.F.R. § 745.90 constituted a violation of 40 C.F.R. § 745.89(d)(1) and (d)(2).

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

**FOURTH COUNT**  
*Failure to Properly Contain Exterior Work Area*

47. Paragraphs 1 through 46, above, are incorporated by reference as if fully set forth herein.

48. 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), in pertinent part, firms performing exterior renovations in target housing must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of the surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever

is greater.

49. With regard to the Washington Ave. Renovation, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material in accordance with the RRP Rule, and such failure constituted a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C).

50. The above-listed violation alleged in this Fourth 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**

51. Section 409 of TSCA and 40 C.F.R. § 745.87 provide that, for purposes of enforcing the RRP Rule under TSCA, the penalty for each violation under TSCA Section 16 shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act, the 2015 Inflation Adjustment Act, and EPA's Penalty Inflation Rule, at 40 C.F.R. § 19.4, the maximum penalty for each such TSCA violation was increased to \$39,873 for violations occurring after November 2, 2015, for which penalty assessment is on or after February 6, 2019.

52. In determining the amount of any penalty to be assessed, Section 16(a) of TSCA requires EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. *See* 15 U.S.C. § 2615(a)(2)(B). To

assess a penalty for the violations alleged herein. Complainant will take into account the particular facts and circumstances of this case with specific reference 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* ("RRP Penalty Policy") (revised April 2013). A copy of the RRP Penalty Policy is enclosed with this Complaint. The RRP Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases.

53. By this Complaint, Complainant seeks to assess civil penalties of up to the statutory maximum of \$39,873 per violation against the Respondent, Build-It Bros., LLC, for the following violations:

- i. FIRST COUNT: At least one (1) violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) for performing renovation activities without EPA certification as a firm – The RRP Rule requirements are intended to prevent exposure to lead during renovations. A firm's failure to obtain initial EPA certification prior to offering or performing renovations in target housing has a medium probability of impacting human health and the environment through, for example, failure to use best work practices, failure to convey to tenants the risks associated with renovations, and failure to have adequate knowledge for meeting all RRP Rule obligations.
- ii. SECOND COUNT: At least one (1) violation of 40 C.F.R. § 745.84(a)(1) and (a)(2) for failure to provide pre-renovation education information (pamphlet) – A firm's failure to provide an EPA-approved lead hazard information pamphlet to the owner and an adult occupant prior to renovating has a high probability of impacting human health and the environment. Without receiving a pamphlet, it is highly probable that the owner/occupant's ability to properly assess information about the risks of exposure to lead-based paint and to weigh this information with regard to renovations in the target housing will be impaired. The pamphlet describes the hazards associated with lead-based paint and provides information about how occupants can protect themselves against potential lead exposure. The pamphlet also explains that lead exposure is especially harmful to young children and

pregnant women, and explains how occupants can protect themselves during and after any renovations.

- iii. THIRD COUNT: At least one (1) violation of 40 C.F.R. §§ 745.89(d)(1) and (d)(2) for failure to use certified renovators – A firm’s failure to assign and use certified renovators for renovation activities performed in target housing has a medium probability of impacting human health and the environment. The failure to assign and use certified renovators to discharge all renovator duties under the RRP Rule presents a medium probability that renovators will not, for example, use best renovation practices and EPA-approved methods during the work and, thereby, will increase the chances of an occupant’s exposure to lead during and/or after the renovation.
- iv. FOURTH COUNT: At least one (1) violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) for failure to contain exterior renovation work area – A firm’s failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet or more beyond the surfaces undergoing renovation so as to collect falling paint debris has a high probability of impacting human health and the environment. Without containing the work area and any paint debris generated by the renovation work, it is highly probable that the risks associated with exposure to lead-based paint debris and dust will increase for anyone who may have access to the uncontained work area.

54. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty amount for all of the violations alleged in this proceeding and explaining how the amount was calculated, as required by the Consolidated Rules of Practice. Complainant will calculate a proposed penalty based, in part, on its current knowledge of the Respondent’s financial condition. 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-01-2019-0055). The check shall be forwarded to:



Complaint and Notice of Opportunity for Hearing  
*Build-It Bros., LLC, TSCA-01-2019-0055*

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 (Mail Code 04-6)  
Boston, Massachusetts 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (Mail Code 04-3)  
Boston, MA 02109-3912

*Notice of payment may be given to Mr. Martinez via e-mail, at [Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov).*

55. 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**

56. 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 receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

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

Respondents shall serve copies of the Answer(s), and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100 (Mail Code 04-3)  
Boston, MA 02109-3912

In its Answer(s), Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (i) the circumstances or arguments alleged to constitute the grounds of any defense; (ii) the facts Respondent disputes; (iii) the basis for opposing any proposed relief; and, (iv) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. 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.

57. 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 e-mail, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with this Complaint.

58. 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. 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.

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

59. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 1.

60. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted to avoid default but that the deadline by which Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. To explore the

Complaint and Notice of Opportunity for Hearing  
*Build-It Bros., LLC, TSCA-01-2019-0055*

possibility of settlement in this matter. Respondent should contact Hugh W. Martinez, Senior Enforcement Counsel, at the address provided above, or by calling him at (617) 918-1867 (direct). Mr. Martinez has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.



Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
EPA Region 1 – New England

Date: 9-26-19



Complaint and Notice of Opportunity for Hearing  
Build-It Bros., LLC, TSCA-01-2019-0055

CERTIFICATE OF SERVICE

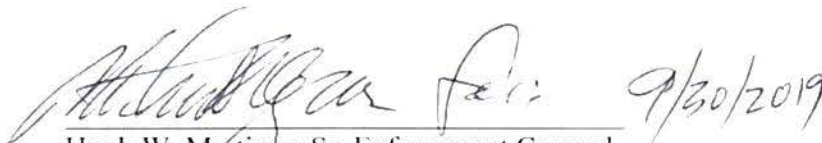
I hereby certify that the foregoing administrative Complaint and Notice of Opportunity for Hearing has been provided to the following persons on the date noted below:

Original and one copy,  
hand-delivered to:

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

One copy (with the Part 22 Rules  
and RRP Penalty Policy enclosed),  
by First Class Mail, Return  
Receipt Requested, to:

David Magee, Owner and Registered Agent  
Build-It Bros., LLC  
38 Mussey Road  
Scarborough, ME 04074



Hugh W. Martinez, Sr. Enforcement Counsel  
U.S. EPA Region 1  
5 Post Office Square  
Suite 100 (Mail Code 04-3)  
Boston, MA 02109-3912

Phone (dir.): (617) 918-1867

Fax: (617) 918-0867

E-mail: [Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov)