

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

In the Matter of:

Brady Sullivan Millworks II, LLC and
Brady Sullivan Millworks IV, LLC
670 North Commercial Street, Suite 303
Manchester, New Hampshire 03101

Respondents.

Proceeding under Section 16(a) of the
the Toxic Substances Control Act,
42 U.S.C. § 2615(a).

Docket No. TSCA-01-2016-0054

**COMPLAINT
AND
NOTICE OF OPPORTUNITY
FOR HEARING**

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), regulations implementing TSCA at 40 C.F.R. §§ 745.87 and 745.118, 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 Legal Enforcement Manager of the Office of Environmental Stewardship, United States Environmental Protection Agency ("EPA"), Region 1.

2. The Respondents in this action, Brady Sullivan Millworks II, LLC ("Millworks II") and Brady Sullivan Millworks IV, LLC ("Millworks IV") (together "Respondents"), are hereby notified of Complainant's determination that Respondents have violated Sections 15 and 409 of

TSCA, 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and federal regulations promulgated under TSCA and/or the Act, including 40 C.F.R. Part 745, Subpart F (*Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, 40 C.F.R. §§ 745.100-745.119), and 40 C.F.R. Part 745, Subpart E (*Residential Property Renovation*, 40 C.F.R. §§ 745.80-745.92). Respondent also is 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 1018 of the Act (*Disclosure of Information Concerning Lead upon Transfer of Residential Property*), 42 U.S.C. § 4852d, and Section 402(a) of TSCA (*Lead-Based Paint Activities Training and Certification – Regulations*), 15 U.S.C. § 2682(a). The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), and the regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L (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), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E (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

(collectively, the PRE Rule and the LBP Activities Rule are referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”).

6. The Disclosure Rule, in pertinent part, requires lessors of target housing to do the following before a lessee is obligated under a lease contract:

- i. Provide to lessees an EPA-approved lead hazard information pamphlet;
- ii. Ensure that the contract to lease includes a Lead Warning Statement;
- iii. Ensure that the contract to lease includes a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof;
- iv. Ensure that the contract to lease includes a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available; and
- v. Provide the lessees with any records or reports pertaining to lead-based paint or lead-based paint hazards in the target housing being leased.

See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1)-(6).

7. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with any requirements of the Disclosure Rule is a violation of TSCA Section 409, 15 U.S.C. § 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of TSCA Section 409, specific civil penalties apply under TSCA Section 16.

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

9. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), 40 C.F.R. § 745.103, and 40 C.F.R. § 745.83, the housing stock addressed by the Act, the Disclosure Rule, and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing), or any “0-bedroom dwelling,” as defined at 40 C.F.R. § 745.103.

10. 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.

11. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), 40 C.F.R. § 745.103, and 40 C.F.R. § 745.83, 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.

12. 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.

13. 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 also includes a renovation performed for the purpose of converting a building, or part of a building, into target housing. The term renovation does not include minor repair and maintenance activities.

14. 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.

15. 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.

16. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent Millworks IV or the violations alleged in this Complaint, firms performing renovations in target housing 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 a lessee or 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; and,

- iv. Retain all records necessary to demonstrate compliance with the same for three years.

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

17. 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 Disclosure Rule or 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.

18. 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.

19. Section 16(a) of TSCA, Section 1018(b)(5) of the Act, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of \$10,000 per violation of the Disclosure Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (“Debt Collection Improvement Act”), and 40 C.F.R. Part 19, violations that occurred after January 30, 1997 through January 12, 2009, are subject to civil penalties of up to \$11,000 per day per violation and violations that occurred after January 12, 2009, are subject to civil penalties of up to \$16,000 per day per violation. *See* 78 Fed. Reg. 66643, 66647 (November 6, 2013).

20. TSCA Section 16(a), 40 C.F.R. § 745.87(d), and 40 C.F.R. § 745.235(e) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Under the Debt Collection Improvement Act and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009 are subject to penalties of up to \$32,500 per day per violation and violations that occurred after January 12, 2009 are subject to penalties of up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643, 66647 (November 6, 2013).

II. GENERAL ALLEGATIONS

21. Respondents are limited liability corporations, organized under the laws of the State of New Hampshire. Millworks II owns and manages the residential portion of a residential and commercial property located at 195 McGregor Street, Manchester, New Hampshire ("Facility"). Specifically, Millworks II owns and manages 98 residential apartment units on the third and fourth floors of the Facility. Millworks II's principal place of business is located at 670 North Commercial Street, Suite 303, Manchester, New Hampshire. Millworks IV owns and manages a portion of the Facility currently being developed into residential units on the first and second floors of the building. Millworks IV's principal place of business also is located at 670 North Commercial Street, Suite 303, Manchester, New Hampshire.

22. The Facility was constructed in 1889 as a cotton mill, and converted to residential apartments and commercial units. Thus, the apartment units within the Facility constitute "target

housing,” as defined in 40 C.F.R. § 745.103. Furthermore, none of the apartment units in the Facility satisfies the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), the Disclosure Rule (including 40 C.F.R. § 745.101), or the RRP Rule (including 40 C.F.R. § 745.82).

23. At all times relevant to this Complaint, Respondent Millworks II offered the apartments in the Facility for lease. Accordingly, Respondent Millworks II is a “lessor” as defined in 40 C.F.R. § 745.103.

24. On May 4, 2015, Respondent Millworks IV, as general contractor, hired Environmental Compliance Specialists, Inc. (“ECSI”) to sandblast paint from a vacant portion of the first and second floors of the four-story Facility. The purpose of the sandblasting was to convert the space to residential apartments. The sandblasting work began in early May 2015.

25. At all times relevant to this Complaint, Respondent Millworks IV was a “firm,” as defined in 40 C.F.R. § 746.83.

26. ECSI’s sandblasting activities at the Facility disturbed more than six square feet of painted surface. Thus, at all times relevant to the RRP Rule violations alleged in this Complaint, ECSI’s renovation activities at the Facility, constituted a “renovation” within the meaning of 40 C.F.R. § 745.83. The renovation at the Facility did not qualify for any of the exemptions pursuant to the RRP Rule. *See* 40 C.F.R. § 745.82(a) and (b) and 40 C.F.R. § 745.83.

27. As a lessor, Respondent Millworks II was subject to the requirements of the Disclosure Rule. As the general contractor for the renovation activities at the Facility, Respondent Millworks IV was subject to the requirements of the RRP Rule.

28. The renovation activities performed by ECSI, constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule.

29. On May 11, 2015, an EPA inspector received an email message, via a co-worker, from an employee of the Healthy Homes and Lead Poisoning Prevention Program, Bureau of Public Health Protection Services, New Hampshire Division of Public Health Services, Department of Health and Human Services, State of New Hampshire (hereinafter "NH DHHS"). The NH DHHS employee reported that she had received a complaint, forwarded by an employee of the New Hampshire Department of Environmental Services, from a current resident of the Facility regarding sandblasting work being conducted there. The complainant stated that he found dust and sandblast media in common areas of the residential portion of the Facility, and that he was concerned about lead in the dust because his young children walk through the common areas. In addition, representatives of the Manchester Health Department visited the Facility on the morning of May 11, 2015, upon receipt of a complaint forwarded by NH DHHS. They determined that abrasive paint removal was taking place on the first floor on the north end of Facility.

30. On May 11, 2015, the City of Manchester stopped ECSI's sandblasting operation because ECSI had not obtained a valid permit for abrasive paint removal, as required by the City.

31. On May 12, 2015, three EPA representatives accompanied by Marc Pinard, General Counsel of Brady Sullivan, Scott Payrits of Brady Sullivan, and Jesse Wright, President of ECSI, conducted an inspection at the Facility. While at the Facility, the EPA inspectors observed dust throughout the interior common areas of the residential portion of the building, along with some chipping paint on walls and doors in the common areas. Further, the inspectors observed that tenants had access to the common hallways. The EPA inspectors also noticed several children in the common hallways while they were in the building.

32. On May 12, 2015, representatives of NH DHHS conducted dust-wipe sampling and X-Ray Fluorescent ("XRF") analysis in common areas at the Facility. Additional sampling was performed by NH DHHS on May 14, 2015. The results of the sampling showed high levels of lead in the dust.

33. On June 3, 2015, two EPA representatives conducted an inspection at the Facility to determine Respondent Millworks II's compliance with the Disclosure Rule.

34. On June 19, 2015, EPA Region 1 issued an Order under Section 7003 of the Resource Conservation and Recovery Act to Brady Sullivan Properties, LLC ordering the company to clean up lead dust and hazards in apartments and common areas on the third and

fourth floors and other common areas throughout the Facility resulting from the sandblasting operations performed by ECSI.

35. As a result of the inspection, Complainant has identified the following violations of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Disclosure Rule and the RRP Rule.

III. VIOLATIONS

DISCLOSURE RULE VIOLATIONS

36. EPA has identified the following violations of the Act and the Disclosure Rule based on documents and other information obtained during or as a result of the 2015 inspections and EPA's investigation of the facts and circumstances underlying the violations.

COUNT I: FAILURE TO PROVIDE RECORDS PERTAINING TO LEAD-BASED PAINT OR LEAD-BASED PAINT HAZARDS

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

38. Pursuant to 40 C.F.R. § 745.107(a)(4), the lessor is required to provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased. This requirement includes records or reports regarding common areas and other residential dwellings in multifamily target housing if the whole property was evaluated for lead-based paint.

39. Respondent did not disclose to the following lessees of 195 McGregor Street, Manchester, NH available records or reports pertaining to such lead-based paint and/or lead-based paint hazards:

- i. The lessees who became obligated to rent apartment 306 on or about February 22, 2015;
- ii. The lessees who became obligated to rent apartment 311 on or about June 1, 2014;
- iii. The lessee who became obligated to rent apartment 316 on or about January 22, 2014;
- iv. The lessees who became obligated to rent apartment 322 on or about February 26, 2015;
- v. The lessees who became obligated to rent apartment 328 on or about March 23, 2014;
- vi. The lessees who became obligated to rent apartment 331 on or about August 3, 2014;
- vii. The lessees who became obligated to rent apartment 333 on or about April 3, 2015;
- viii. The lessee who became obligated to rent apartment 338 on or about January 4, 2015;
- ix. The lessees who became obligated to rent apartment 341 on or about December 24, 2014;
- x. The lessee who became obligated to rent apartment 404 on or about September 3, 2014;
- xi. The lessee who became obligated to rent apartment 409 on or about May 15, 2015;
- xii. The lessees who became obligated to rent apartment 417 on or about April 6, 2014;
- xiii. The lessees who became obligated to rent apartment 427 on or about February 13, 2015; and
- xiv. The lessees who became obligated to rent apartment 438 on or about January 18, 2014.

40. At the time of the lease transactions listed above, Respondent had in its possession, a report entitled "Phase I Environmental Site Assessment" dated September 2, 2010, which contained information pertaining to lead-based paint at the Facility. Respondent Millworks II did not provide this report to the tenants listed in paragraph 39, above.

41. Respondent Millworks II's failure to provide lessees with any records or reports available to the lessors pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased, violated 40 C.F.R. § 745.107(a)(4) and TSCA Section 409, 15 U.S.C. § 2689.

42. Each of the above-listed instances of violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.118(e), and each is a violation for which penalties may be assessed pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and Section 16 of TSCA, 15 U.S.C. § 2615.

RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

43. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained during or as a result of the 2015 inspections, and EPA's investigation of the facts and circumstances underlying the violations.

COUNT II: FAILURE OF FIRM TO OBTAIN CERTIFICATION

44. Paragraphs 1 through 43, above, are incorporated by reference as if fully set forth herein.

45. Pursuant to 40 C.F.R. § 745.81(a)(2), on and after April 22, 2010, 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)(1), firms performing renovations for compensation must apply to EPA for certification to perform renovations.

46. At the time of the renovation (sandblasting) at the Facility, Respondent Millworks IV, as general contractor for the renovation, had not obtained firm certification, as required by 40 C.F.R. § 745.81(a)(2) and 40 C.F.R. § 745. 89(a)(1).

47. Respondent Millwork IV's failure to apply for and obtain firm certification under 40 C.F.R. § 745.89 prior to the commencement of the renovation at the Facility constitutes a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a), and TSCA Section 409.

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

COUNT III: FAILURE TO ASSIGN A CERTIFIED RENOVATOR

49. Paragraphs 1 through 48, above, are incorporated by reference as if fully set forth herein.

50. 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.

51. At the time the renovation at the Facility began, there were no certified renovators assigned to the job.

52. Respondent Millwork IV's failure to ensure that a certified renovator was assigned to the renovation at the Facility, and discharged all of the certified renovator responsibilities set forth in 40 C.F.R. § 745.90, violated 40 C.F.R. § 745.89(d)(2).

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

COUNT IV: FAILURE TO MAINTAIN COMPLIANCE RECORDS

54. Paragraphs 1 through 53, above, are incorporated by reference as if fully set forth herein.

55. 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)-(4), as well as documentation of compliance with work practice standards and certified renovator requirements pursuant to 40 C.F.R. § 745.86(b)(6).

56. With respect to the renovation at the Facility, Respondent Millworks IV did not retain all records necessary to demonstrate compliance with the RRP Rule.

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

58. 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

59. Section 1018(b)(5) of the Act, 42 U.S.C. § 4825d(b)(5), and 40 C.F.R. § 745.118(f) provide that, for purposes of enforcing the Disclosure Rule under TSCA, the penalty for each violation under Section 16 of TSCA shall be no more than \$10,000. Pursuant to the Debt Collection Improvement Act and 40 C.F.R. Part 19, the maximum penalty shall be no more than \$16,000 for each such violation occurring after January 12, 2009.

60. 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 Section 16 of TSCA shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act and 40 C.F.R. Part 19, the maximum penalty shall be no more than \$37,500 for each such violation occurring after January 12, 2009.

61. 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 has taken into account the particular facts and circumstances of this case with specific reference to the following EPA policy documents: (i) for Disclosure Rule violations, the December 2007 *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* (“Disclosure Penalty Policy”); and (ii) for RRP Rule violations, the 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”). Copies of the Disclosure Penalty Policy and the RRP Penalty Policy (collectively, “Penalty Policies”), are enclosed with this Complaint. The Penalty Policies provide a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases.

62. The total proposed civil penalty for both Respondents is in the amount of **one hundred thirty-nine thousand one hundred seventy-one dollars (\$139,171)** for the TSCA violations alleged in this Complaint. (*See* Attachment I to this Complaint explaining the

reasoning for this penalty.) The breakdown of the penalties is as follows:

Count	Description	Provision Violated	Penalty Amount
1	Failure to disclose the presence of known lead-based paint	40 C.F.R. § 745.107(a)(2)	\$52,960
2	Failure to obtain firm certification	40 C.F.R. § 745.89(a)	\$22,500
3	Failure to assign a certified renovator	40 C.F.R. § 745.89(d)(2)	\$22,500
4	Failure to maintain records	40 C.F.R. § 745.86	\$3,000
		Inflation for Disclosure Rule Violations (15.18%)	\$8,039
		Inflation for RRP Rule Violations (4.87%)	\$2,338
		Culpability 25%	\$27,834
		Total penalty	\$139,171

63. The proposed penalty may be adjusted if Respondents establish *bona fide* issues or defenses relevant to the appropriate amount of the penalty. Respondents 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-01-2016-0054). 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 (ORA 18-1)
Boston, Massachusetts 02109-3912

and

Andrea Simpson, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES 04-2)
Boston, MA 02109-3912

64. 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

65. 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, Respondents have 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. **Respondents must file the original and one copy of the written Answer to this Complaint within thirty (30) days of receipt of this Complaint.** Respondents 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 (ORA 18-1)
Boston, Massachusetts 02109-3912

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

Andrea Simpson, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES 04-2)
Boston, MA 02109-3912

66. In their Answer, Respondents 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 Respondents have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied.

Any failure of Respondents 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.

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

VI. DEFAULT ORDER

68. If Respondents fail to file a timely Answer to the Complaint, Respondents may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents’ 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.

VII. SETTLEMENT CONFERENCE

69. Whether or not a hearing is requested upon filing an Answer, Respondents may confer informally with the EPA concerning the alleged violations. Such conference provides Respondents 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.

70. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted in order to avoid default but that the deadline by which Respondents 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 possibility of settlement in this matter, Respondents should contact Andrea Simpson, Senior Enforcement Counsel, at the address provided above, or by calling her at (617) 918-1738 (direct). Ms. Simpson 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.



Joanna B. Jerison, Manager
Regulatory Legal Enforcement Office
Office of Environmental Stewardship
EPA Region 1 – New England

Date: 8/1/16

ATTACHMENT I

In the Matter of Brady Sullivan Mill Works II, LLC and Brady Sullivan Mill Works IV, LLC

Docket Number: TSCA-01-2016-0054

PROPOSED PENALTY SUMMARY

The following provides the justification for the proposed penalty calculation in the administrative penalty action against Brady Sullivan Millworks II, LLC ("Millworks II") and Brady Sullivan Mill Works IV, LLC ("Millworks IV"), which seeks to assess a civil penalty in the amount of **\$139,171** for alleged violations of the Lead Disclosure Rule and the Renovation, Repair and Painting ("RRP") Rule. The penalty was calculated according to EPA's December 2007 *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* ("Disclosure Rule ERPP") and 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. A 25% upward adjustment has been added to the penalties for both the Lead Disclosure Rule and RRP Rule violations because Respondent Brady Sullivan had been informed about the requirements of those rules during EPA's prior inspections in August 2012 and January 2014.

1. DISCLOSURE RULE VIOLATIONS

COUNT I. Failure to Provide Records Pertaining to Lead-Based Paint or Lead-Based Paint Hazards

Provision Violated: 40 C.F.R. § 745.107(a)(4) requires the lessor to provide the lessee any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased.

Circumstance Level: Failure to provide the lessee any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased pursuant to 40 C.F.R. § 745.107(a)(4) results in a high probability of impairing the lessee's ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.107(a)(4) is a *Level 1* violation.

Extent of Harm: The Disclosure Rule 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 documented absence of children or pregnant women warrants a **minor** extent factor.

Respondent Millworks II failed to disclose to the lessee the presence of any known lead-based paint or lead-based paint hazards in the target housing being leased and/or failed to provide the lessee any records or reports available pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased:

Respondent/ Lessor: "Brady Sullivan Mill Works II" ("Brady Sullivan")	Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity -Based Penalty
Brady Sullivan	195 McGregor Street, Manchester, NH #306	2/22/2015	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #311	6/01/2014	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #316	1/22/2014	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #322	2/26/2015	Pregnant mother (unborn child)	Major	\$11,000
Brady Sullivan	195 McGregor Street, Manchester, NH #328	3/23/2014	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #331	8/03/2014	One Child (under 6 yo)	Major	\$11,000
Brady Sullivan	195 McGregor Street, Manchester, NH #333	4/03/2015	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #338	1/04/2015	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #341	12/24/2014	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #404	9/03/2014	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #409	5/15/2015	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #417	4/06/2014	3 grown children (all over 18 yo)	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #427	2/13/2015	none	Minor	\$2,580
Brady Sullivan	195 McGregor Street, Manchester, NH #438	1/18/2014	none	Minor	\$2,580

Sub - Total: \$52,960*

***Total penalty for all Lead Disclosure Rule violations including an inflationary adjustment
(x 1.1518) (+\$8,039):**

Total = \$60,999

2. RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

COUNT II. – Failure of a Firm to Obtain Initial Certification

Provision Violated: 40 C.F.R. § 745.81(a)(2)(ii) requires that all firms performing renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. No firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.

Circumstance Level: The failure to obtain certification from EPA prior to performing renovations results in a *medium 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(a)(2)(ii) is a *Level 3a* violation.

Extent of Harm: The Disclosure Rule 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 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 Millworks IV failed to obtain firm certification before conducting a renovation at the following target housing unit¹:

Respondent/ General Contractor	Work Site Address	Description of RRP Work	Work Date	Children/ Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
Millworks IV	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	None	3a/Major ⁱ	\$22,500

¹ The failure to obtain firm certification is considered a one-time violation. Pursuant to footnote 49 on page A-3 of the LBP Consolidated ERPP, because Respondent Millworks IV is a general contractor, the Extent is Major.

COUNT III. – Failure to Assign a Certified Renovator

Provision Violated: 40 C.F.R. § 745.89(d) requires that all firms performing renovations must ensure that all (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.

Circumstance Level: The failure to ensure that a certified renovator is assigned to the renovation results in a *medium probability* of a renovation firm failing 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. § 745.89(d) is a *Level 3a* 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 presence of children or pregnant women warrants a *major* extent factor.

Respondent Millworks IV failed to assign a certified renovator to the following renovation project:

Respondent/ General Contractor	Work Site Address	Description of RRP Work	Work Dates	Children /Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
Millworks IV	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	Children under 6 yo and pregnant woman	3a/Major	\$22,500

COUNT IV. - Failure to Maintain Records

Provision Violated: 40 C.F.R. § 745.86(a) and (b) requires firms performing renovations to establish and maintain records, and if requested, make available to EPA, all records necessary to demonstrate compliance with the RRP Rule for three years.

Circumstance Level: The failure to maintain records demonstrating compliance with the RRP results in a *low probability* of impacting human health and the environment due to exposure to

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 § 745.86(a) and (b) is a *Level 6a* 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 presence of children or pregnant women warrants a *major* extent factor.

Respondent Millworks IV failed to maintain records demonstrating compliance with the RRP Rule after conducting renovations at the following target housing units:

Respondent/ General Contractor	Work Site Address	Description of RRP Work	Work Dates	Children /Ages	Circumstance/ Extent of Harm Levels	Gravity-Based Penalty
Millworks IV	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	Children under 6 yo and pregnant woman	6a/Major	\$3,000

Sub -Total: \$50,338*

***Total for all RRP Rule violations with an inflationary adjustment (x 1.0487)... (+\$2,338)**
\$50,338

Proposed Penalties:	1018:	\$60,999
	RRP:	\$50,338
	Sub-Total:	\$111,337
Plus 25% Culpability (+\$27,834):	Total:	\$139,171