

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:

Environmental Compliance Specialists, Inc.
111 Route 125
Kingston, New Hampshire 03848

Respondent.

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

**Docket No.
TSCA-01-2016-0055**

**COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING**

COMPLAINT

I. STATUTORY AND REGULATORY BACKGROUND

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), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency ("EPA"), Region 1. Respondent, Environmental Compliance Specialists, Inc. ("ECSI" or "Respondent"), is hereby notified of Complainant's determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("the Act"), 42 U.S.C. § 4851 et seq., and the federal regulations promulgated thereunder, entitled "Residential Property Renovation," as set forth at 40 C.F.R. Part 745, Subpart E.

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

2. 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. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled "Title IV-Lead Exposure Reduction," which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

3. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3) by amending 40 C.F.R. Part 745, Subparts E and L (the "Renovation, Repair and Painting Rule" or the "RRP Rule" and the "Lead-Based Paint Activities Rule," respectively).

4. Pursuant to 40 C.F.R. § 745.82, the regulations in 40 C.F.R. Part 745, Subpart E apply to all renovations performed for compensation in "target housing" and "child-occupied facilities." The definition of "renovation" includes the renovation of a

building for the purpose of converting of a building or portion of a building to target housing. "Target housing" is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling.

Child-occupied facility is defined as a building or portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days with in any week . . . provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at last 60 hours. 40 C.F.R. § 745.83. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. They may be located in target housing or in public or commercial buildings. 40 C.F.R. § 745.83

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

6. 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 the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

7. 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.

8. 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 day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,500 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See 78 Fed. Reg. 66643, 66647.

II. GENERAL ALLEGATIONS

9. Respondent is a corporation registered in New Hampshire with its principal place of business located at 111 Route 125, Kingston, New Hampshire. Respondent is an environmental remediation and demolition company, specializing in asbestos abatement, lead paint removal, PCB removal, mold remediation and general demolition.

10. In May 2015, ECSI was hired by Brady Sullivan Millworks IV, LLC, of Manchester, NH ("Brady Sullivan") to conduct sandblasting of paint off walls in the unoccupied first and second floors of the Mill West Building ("Mill West") located at 195 McGregor Street in Manchester, New Hampshire. The first and second floors of Mill West which were being converted to residential units are owned by Brady Sullivan Millworks IV, LLC. At all times relevant to this complaint, the third and fourth floors of Mill West (owned by Brady Sullivan Millworks II, LLC) contained 98 occupied

residential apartments. According to the building permit issued to Brady Sullivan by the City of Manchester, New Hampshire on April 21, 2015, the purpose of the work being conducted on the first and second floors of Mill West was to construct 110 dwelling units. The building permit lists Brady Sullivan as the general contractor for the project.

11. The Mill West Building was constructed in 1889 as a cotton mill, and was converted to residential apartments and commercial space.

12. At all times relevant to this Complaint, Mill West was “target housing,” as defined in 40 C.F.R. § 745.83. Furthermore, the building did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

13. Respondent obtained firm certification on May 19, 2010, from EPA pursuant to 40 C.F.R. § 745.89 of the RRP Rule. That certification expired on June 2, 2015. On June 11, 2015, Respondent was re-certified as a firm by EPA pursuant to the RRP Rule.

14. Respondent’s sandblasting activities at Mill West disturbed more than six square feet of painted surface.

15. At all times relevant to the allegations in this Complaint, Respondent’s sandblasting operation at Mill West was a “renovation,” as defined in 40 C.F.R. § 745.83.

16. At all times relevant to the allegations in this Complaint, the sandblasting project at Mill West was a “renovation for compensation” subject to the RRP Rule. See 40 C.F.R. § 745.82. Furthermore, the sandblasting operation at Mill West did not satisfy the requirements for an exemption to the provisions of the RRP Rule. See 40 C.F.R. §§ 745.82(a) and (b) and 745.83.

17. At all times relevant to the allegations in this Complaint, Respondent was a “renovator” as defined in 40 C.F.R. § 745.83.

18. At all times relevant to the allegations in this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

19. At all times relevant to the allegations in this Complaint, Respondent did not assign a certified renovator to the renovation at Mill West, as required by 40 C.F.R. § 745.81(a)(3).

20. 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 Mill West regarding sandblasting work being conducted there. The complainant stated that he found dust and sandblast media in common areas of Mill West, 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 Mill West 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 Mill West.

21. 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.

22. On May 12, 2015, three EPA inspectors, accompanied by Marc Pinard, General Counsel of Brady Sullivan, Scott Payrits of Brady Sullivan, and Jesse Wright, President of ECSI, conducted an inspection at Mill West. While at Mill West, the EPA inspectors observed dust throughout the interior common areas 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.

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

24. On June 3, 2015, two EPA representatives conducted follow-up inspections at the Mill West work site and at ECSI's office in Kingston, New Hampshire.

25. 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 in Mill West resulting from the sandblasting operations performed by ECSI.

26. As a result of the inspections, Complainant has identified the following violations of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth at 40 C.F.R. Part 745, Subpart E.

III. VIOLATIONS

Count 1 - Failure to Assign Certified Renovators

27. Complainant incorporates by reference paragraphs 1 through 26.

28. Pursuant to 40 C.F.R. § 745.89(d), 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.

29. At the time of the May 12, 2015 inspection at Mill West, although sandblasting operations were ongoing, ECSI had no certified renovators at the worksite. During the inspection of ECSI's office on June 3, 2015, ECSI could not provide any renovator certificates to the EPA inspector.

30. Respondent's failure to assign certified renovators to the renovation project at Mill West constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA.

31. 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.

Count 2 – Performance of Prohibited Practices - Sandblasting

32. Complainant incorporates by reference paragraphs 1 through 31.

33. 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)(i)(D), the firm must cover the interior floor surface with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of

surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

34. While performing the sandblasting operation at Mill West, Respondent did not cover the floor surface with taped-down plastic sheeting or other impermeable material.

35. Respondent's failure to cover the floor in the work area with taped down plastic sheeting or other impermeable material constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(i)(D), and Section 409 of TSCA.

36. 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.

Count 3 - Failure to Provide Pre-Renovation Education Information

37. Complainant incorporates by reference paragraphs 1 through 36.

38. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, a firm must provide lead hazard information in the form of an EPA pamphlet to the owner of the unit, and 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).

39. Respondent did not provide an EPA pamphlet or EPA-approved pamphlet to the owner of Mill West before commencing sandblasting activities on the first and second floors of the property.

40. Respondent's failure to distribute a pamphlet to the owner of Mill West prior to commencing renovation activities at the property violated 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA.

41. 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.

Count 4 – Failure to Contain the Work Area

42. Complainant incorporates by reference paragraphs 1 through 41.

43. 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), before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed.

44. At the time of the renovation at Mill West, Respondent did not adequately contain the work area. On May 12, 2015, EPA inspectors observed dust and debris from the renovation in the common areas on the third floor of Mill West. A risk assessment later performed by a consultant hired by Brady Sullivan Properties, LLC confirmed that the lead dust observed in the common areas was released from ECSI's work area on the first and second floors of Mill West.

45. Respondent's failure to contain the waste from the renovation project at Mill West to prevent releases of dust and debris from the work area constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2) and Section 409 of TSCA.

46. 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.

Count 5 - Failure to Maintain Compliance Records

47. Complainant incorporates by reference paragraphs 1 through 46.

48. 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) through (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).

49. With respect to the Mill West renovation, Respondent did not retain all records necessary to demonstrate compliance with the RRP Rule.

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

51. 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.

Count 6 - Failure to Post Signs

52. Complainant incorporates by reference paragraphs 1 through 51.

53. 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)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post renovation cleaning verification have been completed.

54. At the time of the May 12, 2013 EPA inspection at Mill West, there were no warning signs posted outside of the area where the sandblasting work was being performed. Shortly after the EPA inspection when EPA notified ECSI that warning signs were required, Respondent posted appropriate signs outside of the work area.

55. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area, violated 40 C.F.R. § 745.89(d)(3) and 40 C.F.R. § 745.85(a)(1).

56. 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

57. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent and gravity of

the violations and, with respect to Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

58. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to 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"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. Complainant proposes that Respondent be assessed a civil penalty in the amount of **one hundred fifty-two thousand eight hundred forty-eight dollars (\$152,848)** for the TSCA violations alleged in this Complaint. (See Attachment I to this Complaint explaining the reasoning for this penalty.) The provisions violated and the corresponding penalties are as follows:

REQUIREMENT	PROVISION	PENALTY
Failure to Assign Certified Renovator	40 C.F.R. § 745.89(d)(2)	\$37,500
Failure to Cover the Floor with Plastic Sheeting	40 C.F.R. § 745.85(a)(2)(i)(D)	\$30,000
Failure to Provide Pamphlet	40 C.F.R. § 745.84(a)(1)	\$16,000

Failure to Contain Work Area	40 C.F.R. § 745.85(a)(2)	\$30,000
Failure to Maintain Records	40 C.F.R. §§ 745.86(a) and (b)	\$30,000
Failure to Post Signs	40 C.F.R. § 745.85(a)(1)	\$16,000
	Subtotal	\$132,500
	Inflation (4.87%)	\$6,453
	Subtotal	\$138,953
	Culpability (10%)	\$13,895
	Total Penalty	\$152,848

59. 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-01-2016-0055). 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)

In the Matter of Environmental Compliance Specialists, Inc, LLC; TSCA-01-2016-0055

Boston, MA 02109-3912

60. 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

61. 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, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

62. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

63. Respondent shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda A. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

64. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Andrea Simpson, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Andrea Simpson
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-2
Boston, Massachusetts 02109-3912

65. 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 of the Consolidated Rules of Practice. 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.

66. 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. SETTLEMENT CONFERENCE

67. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent's counsel should contact Andrea Simpson, Senior Enforcement Counsel, at the address cited above or by calling (617) 918-1738. Please note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

7/28/16
Date

ATTACHMENT I

In the Matter of *Environmental Compliance Specialists, Inc.* ("ECSI")

Docket Number: TSCA-01-2016-0055

PROPOSED PENALTY SUMMARY

The following provides the justification for the proposed penalty calculation in the administrative penalty action against Environmental Compliance Specialists, Inc. ("ECSI"), which seeks to assess a civil penalty in the amount of **\$152,848** for alleged violations of the Renovation, Repair and Painting ("RRP") Rule. The penalty was calculated according 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* ("LBP Consolidated ERPP").

A breakdown of the penalty by count is set forth below. A 10% upward adjustment has been added to the penalties for the RRP Rule violations because Respondent ECSI knew about the requirements of the rule as demonstrated by the fact that it applied for and received EPA RRP Firm Certification. There were children under 6 years old and at least one pregnant woman who had access to common areas that were contaminated by lead-based paint and/or lead dust hazards resulting from ECSI's renovation activities.

1. RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

COUNT I. – Firm Responsibilities: 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 *high 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)(2) is a *Level 1a* 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 failed to assign a certified renovator to the following renovation project:

Respondent/ Sub-Contractor	Work Site Address	Description of RRP Work	Work Dates	Children /Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
ECSI	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	Pregnant woman and children under 6 yo	1a/Major	\$37,500

Count II. Work Practice Standards: Failure to Cover the Floor with Plastic Sheeting

Provision Violated: 40 C.F.R. § 745.85(a)(2)(i)(D) requires firms performing renovations, before beginning the renovation, to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surface undergoing renovation or sufficient distance to contain the dust, whichever is greater.

Circumstance Level: The failure by the firm, before beginning the renovation, to cover the floor surface with plastic sheeting or other impermeable material in the work area results in a *high probability* of impacting human health and the environment 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. § 745.85(a)(2)(i)(D) is a *Level 2a* 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 Environmental Compliance Specialists, Inc. ("ECSI") failed to cover the floor with plastic sheeting prior to conducting renovations at the following target housing units:

Respondent/ Sub- Contractor	Work Site Address	Description of RRP Work	Work Dates	Children /Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
ECSI	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	Pregnant woman and children under 6 yo	2a/Major	\$30,000

Count III. Information Distribution Requirement: Failure to Provide Pamphlet

Provision Violated: 40 C.F.R. § 745.84(a)(1) requires firms performing renovations, before beginning the renovations, to provide the owner of the unit with the EPA-approved lead hazard information pamphlet.

Circumstance Level: The failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet results in a *high probability* of impacting human health and the environment 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. § 745.84(a)(1) is a *Level 1b* 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 failed to provide the owner of the unit with the EPA-approved lead hazard information pamphlet prior to conducting renovations at the following target housing units:

Respondent/ Sub- Contractor	Work Site Address	Description of RRP Work	Work Dates	Children /Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
ECSI	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	Pregnant woman and children under 6 yo	1b/Major	\$16,000

Count IV. Work Practice Standards: Failure to Contain Work Area

Provision Violated: 40 C.F.R. § 745.85(a)(2) requires firms performing renovations, before beginning the renovations, to contain the work area by isolating the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain integrity of the containment by ensuring that any plastic are not torn or displaced and taking any other steps necessary to ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

Circumstance Level: The failure to contain the work area results in a *high probability* of impacting human health and the environment 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 § 745.85(a)(2) is a *Level 2a* 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 failed to contain the work area while conducting renovations at the following target housing units:

Respondent/ Sub- Contractor	Work Site Address	Description of RRP Work	Work Dates	Children /Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
ECSI	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	Pregnant woman and children under 6 yo	2a/Major	\$30,000

COUNT V. – Recordkeeping Requirements: Failure to Maintain Records Demonstrating Compliance with the RRP Rule

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 *lesser probability* of impacting human health and the environment 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 failed to establish and maintain records demonstrating compliance with the RRP Rule after conducting renovations at the following target housing units:

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

COUNT VI. – Work Practice Standards: Failure to Post Signs

Provision Violated: 40 C.F.R. § 745.85(a)(1) requires firms performing renovations to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

Circumstance Level: The failure to post warning signs results in a *high probability* of impacting human health and the environment 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 § 745.85(a)(1) is a *Level 1b* 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 failed to post warning signs prior to conducting renovations at the following target housing unit:

Respondent/ Sub- Contractor	Work Site Address	Description of RRP Work	Work Dates	Children /Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
ECSI	195 McGregor Street, Manchester, NH	Conversion of commercial units into 110 residential units	Beginning late April/ Early May 2015	Pregnant woman and children under 6 yo	1b/Major	\$16,000

Summary of Proposed Penalties:

<u>Count I</u>	<u>\$37,500</u>
<u>Count II</u>	<u>\$30,000</u>
<u>Count III</u>	<u>\$16,000</u>
<u>Count IV</u>	<u>\$30,000</u>
<u>Count V</u>	<u>\$3,000</u>
<u>Count VI</u>	<u>\$16,000</u>
	Sub-Total: \$132,500*
*Sub-Total with an inflationary adjustment:	
(x1.0487).....	+\$6,453
	<u>Sub-Total:</u> <u>\$138,953</u>
<u>Plus 10%</u>	
<u>Culpability</u>	+\$13,895
<u>Total</u>	<u>\$152,848</u>