



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 19 2010

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Transmittal of the Interim Final Lead-Based Paint Consolidated Enforcement Response and Penalty Policy

FROM: Rosemarie A. Kelley, Director *RAK/SK*
Waste and Chemical Enforcement Division

TO: Addressee List

This memorandum transmits the Interim Final Lead-Based Paint Consolidated Enforcement Response and Penalty Policy (LBP Consolidated ERPP) for civil administrative enforcement actions taken pursuant to Section 16 of the Toxic Substances Control Act (TSCA). This Policy sets forth guidance for Agency officials to use in determining the appropriate enforcement response and penalty amounts for violations of Section 409 of TSCA resulting from failure or refusal to comply with provisions of the Pre-Renovation Education Rule (PRE Rule); Renovation, Repair and Painting Rule (RRP Rule); and Lead-Based Paint Activities, Certification and Training Rule (LBP Activities Rule).

This Policy is immediately effective and applicable, and it supersedes any enforcement response or penalty guidance previously drafted or issued for the PRE Rule or LBP Activities Rule. This Policy should be used to calculate penalties sought in all TSCA civil administrative enforcement actions or accepted in settlement of civil administrative enforcement actions brought under TSCA § 16 after the date of the Policy, regardless of the date of the violation. To the maximum extent practicable, this Policy shall also apply to the settlement of civil administrative enforcement actions instituted but not yet resolved prior to the date of this Policy.

Initial Enforcement of the RRP Rule

EPA recently issued two memoranda and two sets of questions and answers providing policy and guidance on the implementation and enforcement of the Renovation, Repair and Painting Rule (RRP Rule) which was effective on April 22, 2010. Taken together, these documents provide new timeframes and conditions for firms to submit their applications and fees to obtain certification and for individual renovators to apply for and obtain training and certification. Therefore, as stated in the April 20 and June 18, 2010 supplemental guidance memos from Cynthia Giles regarding firm certification and individual renovator training and certification requirements, EPA will not take formal enforcement action where the following conditions and timeframes are met:

- Any firm that submitted an application and fee to EPA before April 22, 2010 and, without time limit, is waiting for a final response from EPA.
- Any firm that submits an application and fee to EPA and is certified by September 30, 2010.
- Any individual renovator who applies to enroll in or is enrolled in an accredited training program not later than September 30, 2010, takes the training, and receives their certification by December 31, 2010.

EPA will continue to enforce the work practice standards (40 C.F.R. § 745.85), associated recordkeeping requirements (40 C.F.R. § 745.86) and information distribution requirements (40 C.F.R. § 745.84). However, the work practice standards and associated recordkeeping requirements contain several provisions, including a certification requirement that must be performed by a certified individual renovator. In order to allow renovation firms and individual renovators to comply with these requirements, EPA will respond to any violation of a requirement to use a certified renovator or have a certified renovator certify that certain actions were carried out, by issuing a Notice of Noncompliance if the renovation firm is in substantial compliance because it is using an individual to perform the duties of a certified renovator, who has applied to enroll in or is enrolled in an accredited renovation training course by September 30, 2010.

Continuing Renovations Beyond the Effective Date of the Opt-out Amendment

On July 6, 2010, the Opt-out Amendment to the RRP Rule went into effect applying work practice standards, recordkeeping and reporting, and certification requirements to additional target housing units. Where it is infeasible for a renovation firm conducting renovation projects under an opt-out waiver signed before July 6, 2010, to complete all activities that disturb painted surfaces by July 6, 2010, renovation, repair, and painting projects may briefly continue under the benefit of that opt-out waiver. Ongoing projects that are not in full compliance with the work practice standards must be completed as expeditiously as possible and new projects may not be started. All training and certification requirements and implementation policies, including the new compliance timeframes for firms and individuals as addressed above, apply to all projects captured under the Opt-out Amendment.

Acknowledgements

I want to thank the workgroup and everyone who provided comments throughout the development of this document. Regional comments were considered carefully by the Waste and Chemical Enforcement Division (WCED) and incorporated into this interim final policy in all instances where WCED found the recommended change consistent with the Agency's enforcement objectives and policies or the comments clarified the document. This Policy represents a significant step forward in how EPA will structure these documents and how EPA will consider various factors in determining the violator's culpability, ability to pay, and the economic benefit of noncompliance in the assessment of TSCA civil administrative penalties. In

particular, the analysis of economic benefit is a very important part of this policy because inclusion of the economic benefit component in the penalties EPA assesses will help to ensure that our enforcement actions serve as a true deterrent to violations. The Agency's 1984 Policy on Civil Penalties mandates the capture of any significant economic benefit that accrues to a violator from noncompliance with the law.

WCED realizes that this consolidated policy covers violations of TSCA resulting from failures or refusals to comply with three significant rules of the lead-based paint program. WCED will provide assistance through consultation and additional guidance as we implement the rules and this policy.

If you have questions about this memorandum or the LBP Consolidated ERPP, please contact Michael Bellot, Branch Chief, at (202) 564-3083 or Mike's staff members, Tony Baney at (202) 564-4169 and Dean Ziegel, Attorney-Advisor, at (202) 564-4038.

Attachment

Addressees:

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cc: Regional Enforcement Coordinators for the LBP Program
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