

Supplemental Information
for
OSC File No. DI-16-3546

The Environmental Protection Agency takes very seriously its role and responsibilities in protecting everyone from the hazards of lead-based paint through implementing and enforcing the Renovation, Repair, and Painting (RRP) rule. The information in the following pages supplements our initial response to the Office of the Special Counsel report DI-16-3546 and provides additional details concerning the actions taken by the Agency.

INSPECTOR TRAINING AND CREDENTIALING

National Inspector Training and Credentialing Implementation and Oversight

- In September 2016, the Office of Compliance (OC) updated the national RRP inspector manual. (Please see link to the updated manual in Appendix A).¹ Appendix A contains a listing of national guidance, online resources and training and includes the dates that these measures were created, updated or implemented. Additional background information is also included in Appendix A.
- In January of 2017, OC began to conduct annual health and safety certifications of inspectors in coordination with regional Safety, Health, and Environmental Management managers.
- From June to September of 2017, OC conducted a National Credentials Documentation Audit which covered all training requirements for a random sample of 10% of the Agency's federal and non-federal inspectors. EPA is committed to continuing this audit program and to tracking any deficiencies found in regional documentation and credentialing practices.
- In 2015, OC began to host regular national Lead calls for inspectors to discuss a variety of lead program-related issues and best practices, including RRP.

Region 4 Inspection Training and Credentialing Program Implementation and Oversight

- In 2017, the Air, Pesticides and Toxics Management Division (APTMD) Director put measures in place to hold the enforcement branches accountable for documenting inspector training and credentialing processes to assure adherence to the requirements. These robust measures (improved documentation, supervisory review and approval, tracking, and routine management oversight) assure adherence to the OC guidance to train and prepare inspectors to receive their EPA enforcement credentials.
- The Regional Compliance Assurance Training Coordinator, the Lead and Asbestos Section (LAS) chief and Chemical Safety and Enforcement Branch (CSEB) chief oversee

¹ The Office of Compliance (OC) oversees the national inspector credentialing program by providing policies and guidance to inspectors who conduct compliance inspections/field investigations on behalf of EPA. The RRP manual was last updated in September 2016. OC continues to oversee the RRP inspection manual, collect questions and comments and periodically revise this inspection manual.

the training and credentialing process for the RRP inspectors. Region 4 credentials are issued by the Security Management Division in HQ and, in part, their decisions are based on information provided by the Region regarding the completion of training.

The LAS follows the Region 4 recordkeeping requirements and process for retaining the training certifications for each inspector. A separate file for each inspector is maintained by the CSEB Credentials Coordinator in a locked and secured location. The file contains hard copies of the training certificates and documentation required since issuance of the inspector's initial credentials. To facilitate better oversight, the Health and Safety training certification is now kept in both the inspector credentials folder and in the electronic database - The Field Readiness Data System for Health and Safety - maintained by the Regional Safety Officer. Annually, the inspectors and supervisor must certify that the required training has been successfully completed.

- Instituted in 2015, the inspector training tracking system consists of an easily trackable spreadsheet. This new system includes notifications to inspectors when training is due, regular status updates to the CSEB chief and first line supervisors, and now the system has been modified to require completion of the annual training requirements at least four months in advance of the regional deadline. Once the CSEB Credentials Coordinator determines all of the training requirements have been met, he/she presents the national certification template signed by the inspector to the first line supervisor along with all of the supporting training certifications. Now standard in Region 4, the first line supervisor reviews the training documentation prior to approving the certification template. Once completed, the first line supervisor provides the template to the Regional Compliance Assurance Training Coordinator and a copy is maintained in the inspector's file.

The Regional Compliance Assurance Training Coordinator, located in the Office of the Regional Administrator, conducts the Regional Credentials Documentation Audit for Region 4. As with the national audit, the Region 4 audit covers all training requirements for a random sample of 10% of the Region's federal and non-federal inspectors. The audit is an annual requirement. The Region conducted and completed its first audit in 2017.

ADDITIONAL OVERSIGHT AND REVIEW OF INSPECTION FILES

National Oversight

EPA Regional Offices that perform TSCA Lead-Based Paint Inspections are required to maintain records of inspections in the Integrated Compliance Information System (ICIS).²

² EPA Regional Offices that perform TSCA Lead-Based Paint Inspections are required to enter a record of those inspections into EPA's Integrated Compliance Information System (ICIS). ICIS is a data system housing facility specific environmental compliance and enforcement information, including the date and status of inspections, findings, identification of violations where applicable and the action(s) needed to return a facility to compliance. This data system is used by OECA and the regions to oversee the quality of inspections and that the appropriate follow-up action is taken. Regions have been required to enter such inspections into ICIS since the effective date of the TSCA Renovation, Repair, and Painting Rule in 2010. OECA has issued Data Entry Guidance which describes what information Regions must enter into

- In 2016, the national TSCA Compliance Monitoring Strategy was revised and expanded the definition of what constitutes “compliance monitoring activities.” Additionally, the expanded definition of compliance monitoring activities encompasses all of the means used to make a compliance determination, ranging for example from off-site record reviews to an on-site compliance evaluation.
- OECA conducts an annual data quality review process at the end of each fiscal year before reporting publicly the “Annual Results” of the enforcement and compliance program. As part of that review process, the Deputy Regional Administrator must certify that all data entered into ICIS is accurate and complete, including data on inspection activities for the Lead Based Paint program. Inspections, evaluations, and investigations are required to be certified for annual reporting.

Regional Oversight

- In order to prepare the Deputy Regional Administrator for the OECA annual data quality review certification, the Regional ICIS Data Administrator and the ICIS Enforcement Coordinator review the data throughout the year and as they see issues, seek reconciliation with the appropriate program branch chief. Once the fiscal year ends, the ICIS Data Administrator and the ICIS Enforcement Coordinator pull data for each program and check it against the national guidance and checklist for completeness. The ICIS Data Administrator and/or ICIS Enforcement Coordinator report any deficiencies to the branch chief and reconcile prior to the Deputy Regional Administrator’s certification.
- In FY18, the APTMD Director formally updated and reaffirmed procedures for conducting and completing inspections. All APTMD branches with enforcement functions were required to submit their procedures for completing programmatic inspections.
- The FY18 updated procedures for the lead and asbestos programs include the identification of applicable national guidance, an outline of pre-inspection activities and post-inspection activities, a checklist for ensuring complete documentation in the inspection file and a template for completing the inspection report. After the inspection has been completed and the inspector has completed the post-inspection work, the results of the inspection (report and required documentation) are included in the inspection file for the lead enforcement coordinator’s review and recommendation for close-out or potential enforcement action.

The LAS Chief then reviews the completed file, signs off that the file has been completed and assigns the case for either close out or appropriate compliance/enforcement action. Previously, the file review was conducted for 100% of the files by the lead enforcement coordinator and only a portion of the files by the LAS chief. CSEB strengthened the review by including this additional level of review and approval by the supervisor for 100% of the files. Included in the lead enforcement coordinator’s and supervisor’s review is the inspection data entry form for ICIS, Notice of Inspection, TSCA CBI form, Receipt

ICIS to meet reporting requirements for Compliance Monitoring activities (e.g., inspections, evaluations, investigations, and off-site record reviews).

for Samples and Documents, and Inspection Notes.³ These forms are reviewed to ensure that all data is accurate, including the proper characterization of the field activity. The inspection reports and completed files are due within 45 days for supervisory review and possible case assignment.

- The Director now receives, at a minimum, quarterly briefings on the status of inspections and case development. This information is also reviewed with the regional Office of Enforcement Coordination.

MAINTAINING THE INSPECTION FILES/DATA MANAGEMENT

In 2015, Region 4 started taking steps to better develop and improve records management for the lead based paint program. The Region completed its implementation of this new more robust system in early 2017. In FY18, the Region included additional oversight. The implementation included:

- In August 2015, secured locked storage for the lead and asbestos enforcement files.
- In April 2016, assigned a grantee with records management skills to manage the lead and asbestos records with a focus on inspection files. Assigned an EPA employee to oversee the grantee performance.
- In October 2016, instituted a file tracking and accountability system for inspectors and case developers to check out and return files as part of an improved records management system.
- In May 2017, hired a contractor with expertise in records management to set up a robust filing system for lead and asbestos, locate/recover missing files to the extent possible and assure the filing system meets all applicable requirements. The records management contractor is overseen by a regional records management coordinator in the Assistant Regional Administrator's office who assures all systems are designed to meet the Agency standards.
- Required quarterly branch chief reviews of the systems that are in place and beginning in FY18, the director/deputy reviews of the systems annually including review of a written summary of the process.

PREGNANT WOMEN AND CHILDREN

Under Section 402 of the Toxic Substances Control Act (TSCA), EPA was required to promulgate regulations for “renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.” In order to fulfill the statutory obligation for “target housing,”⁴ EPA promulgated the

³ Region 4 uses standard forms. These forms can be found at:
https://usepa.sharepoint.com/:f:/r/sites/R4_Work/ptsbfast/SOPControlled%20Document%20Library/LAS%20-%20TSCA%20LBP%20Compliance%20Monitoring?csf=1&e=1cp8M6

⁴ Under TSCA, “target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

Renovation, Repair, and Painting (RRP) rule in 2008. The rule was designed to be protective of the most vulnerable populations, pregnant women and children under 6 years of age. While the rule is protective of the most vulnerable populations, it applies to all target housing where lead-based paint renovation, repair and painting activities disturb painted surfaces above a *de minimis* amount of square footage⁵ regardless of whether children or women occupy the facility being renovated (75 FR 24803-24804). For example, the rule is protective of situations where families with young children purchase recently renovated property built before 1978 or who occupy neighboring properties where renovation is taking place.

The recordkeeping provisions of the RRP rule, codified at 40 CFR § 745.86, require that regulated entities (i.e., the contractors who perform RRP activities) prepare and retain specific renovation-related records for a minimum of three years. There is no specific requirement in TSCA or in the RRP rule for contractors to document whether occupants of renovated homes may be pregnant or are children under the age of 18 years. Similarly, there is no requirement for EPA inspectors to collect evidence of occupants who are pregnant or are children under the age of 18 years. Because the RRP rule applies to all target housing, evidence of pregnant women and children under 18 are not elements of proof needed to establish liability.

The Enforcement Response Policy governing RRP, however, does provide penalty matrices that delineate the gravity based penalty using that criteria, which can affect the size of the penalty. Therefore, it can be useful for case development if an inspector collects this information during inspections, and this is encouraged in the RRP Inspection Manual. Should that information be unavailable at the time of the inspection, it may be gathered during the course of an enforcement response.

Region 4 collects evidence of occupants who are pregnant or may be children under age 18 if it can be obtained during the inspection either from the records reviewed or directly communicated by the company representative who is interviewed during the inspection. If the information cannot be obtained during the inspection, then the case development officer to which the file is assigned will follow-up to confirm occupancy at the time renovation work occurred. This information is then used as described above in calculating the penalties consistent with the Enforcement Response Policy.

Communication to owners is also an important part of the RRP rule. For example, while the renovation is on-going, contractors must post warning signs at the entrance of the work area to keep occupants and others not involved in the renovation activity from entering the work area. These signs should, when practicable, be in the primary language of the occupants. Pursuant to TSCA § 406(b) and the RRP rule, contractors must provide a lead hazard information pamphlet to their clients (owners and adult occupants of target housing and Child Occupied Facilities (COFs) prior to commencing renovations subject to the RRP rule. This information distribution requirement is intended to provide communication and education about lead-based paint hazards to owners and occupants of target housing and COFs. This is a regulatory requirement for firms performing renovations (40 CFR § 745.84).

⁵ The RRP rule does not apply when a determination has been made that the components affected by the renovation are free of lead-based paint.

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The RRP rule is a companion rule to the Section 1018 rule requiring sellers, lessors and agents to distribute the lead hazard warning pamphlet, obtain signature of buyers and renters confirming receipt of the pamphlet, provide any information on lead contamination and allow buyers and renters a 10-day period for lead testing.

In addition to the RRP rule and the Section 1018 rule, EPA strives to further increase public awareness about lead and its hazards by conducting outreach activities and educating public health practitioners, members of the regulated community, and the general public. Under TSCA § 405, EPA must, among other things, work with other agencies to increase public awareness of the scope and severity of lead poisoning from household sources; potential exposure to sources of lead in schools and childhood day care centers; the implications of exposures for men and women, particularly those of childbearing age; the need for abatement and management actions; the need for universal screening of children; the health consequences of lead exposure resulting from lead-based paint hazards and how to identify such hazards; and measures to reduce the risk of lead exposure from lead-based paint. Specific activities undertaken by EPA include coordinating with Housing and Urban Development and Centers for Disease Control to develop annual National Lead Poisoning Prevention outreach tools, including posters and fliers, resource guides, web banners, web pages, and social media tweets. In 2017, EPA also coordinated with the World Health Organization and the United Nations Environment Programme to develop similar tools for International Lead Poisoning Prevention Week.

Appendix A Inspector Training and Credentialing

EPA-employees, state, tribal and local government employees, contractors and SEE employees can obtain EPA inspector credentials. OC publishes media-specific inspector manuals for inspectors to follow, including lead RRP, which can be found online at <https://www.epa.gov/sites/production/files/2016-04/documents/rrpinspectionmanual.pdf> All inspectors with EPA credentials, whether federal employees or non-federal employees, must follow the same general training requirements and follow the same policies and guidance. Training includes Basic Inspector, initial Health and Safety, initial media program-specific, self-study and on-the-job, training. It also includes annual health and safety, annual media program-specific, and annual skills refresher training.

Inspectors perform an integral role in the Agency's enforcement and compliance program. Since the work conducted by inspectors can lead to future enforcement actions against the regulated community, it is imperative that inspectors fulfill and remain up-to-date on all of the training requirements to support the strength of EPA cases. Currently, EPA has approximately 1400 federal inspectors and 500 non-federal inspectors.

OC has taken a number of steps to support inspectors and reinforce the requirements for the inspector credentialing program. Some of these include:

Guidance:

1. In August 2016, implemented Standard Operating Procedures under the Agency's Quality Assurance Field Activities Procedures that programs use for inspection-related activities.
2. Provided annual credentialing guidance for EPA-employee, state and tribal, contractor and SEE inspectors, most recently on June 13, 2017.
3. Provided and updated media-specific inspector manuals, including the September 2016 Inspection Manual for the Lead Renovation, Repair and Painting Rule.
4. Issued instructive memoranda 2015, 2016 and 2017 discussing the credentialing process and timelines.
5. Provided annually, media program-specific inspector templates spelling out program-specific inspector training requirements, most recently on December 21, 2017.

Online Resources:

1. In 2017, improved and streamlined the Inspector Wiki website (<https://wiki.epa.gov/inspector>) that houses all inspector-related guidance, policies and other information.
2. In 2016, posted and continue to update frequently asked questions and answers for inspectors on the wiki.
3. In September 2015, put in place new and revised Job Hazard Analysis Forms for inspectors.
4. In November 2016, developed a Clean Water Act compliance "presentation" library as a resource to better understand specific specialty topics.

Training:

1. In 2013, began developing almost one hundred on-demand e-learning courses for inspectors. These are available through the Inspector Wiki and require passing a knowledge test at the conclusion of every training course.
2. In 2014, began developing annual training completion certification forms for inspectors and supervisors to use.
3. In May 2014, began supporting and providing training for a Talent Management System that houses all inspectors training completion certificates.
4. In May 2015, began hosting regular Inspector Community of Practice conference calls and posting recording and resources on Share Point at https://usepa.sharepoint.com/sites/OECA_Work/CPS/ICOP/SitePages/Home.aspx
5. In September 2016, began hosting monthly conference calls with Regional Credentialing Coordinators.