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Elizabeth Wilde's comments on EPA response January 2018

Introduction:

On April 5, 2017, the Special Counsel referred my two disclosures to the Environmental Protection Agency (EPA) Administrator for a response. The allegations referred for investigation were as follows:

- The majority of EPA Region 4's lead-based paint inspections from mid-2013 to mid-2015 were conducted by individuals without proper training or credentials.
- The majority of EPA Region 4's lead-based paint inspections for FY 2012 through FY 2015 were deficient because inspectors failed to:
 - Obtain required Notice of Inspection and Consent for Entry documentation;
 - Review or collect documentary evidence to verify that firms conducting renovations had complied with the RRP Rule and TSCA, including
 - ✓ Proof that older residential buildings were tested for lead-based paint before being renovated;
 - ✓ That renovators disclosed the hazards of lead-based paint to residents; and
 - ✓ Renovations were performed with an EPA-certified renovator using lead-safe work practices; and
 - ✓ A determination whether children occupied the facilities being renovated.

Summary:

The EPA response largely confirmed my disclosures. It concludes with the following statement in its "Actions Taken/Planned" section:

"The Agency acknowledges that these are serious matters and is committed to making needed improvements to ensure that the RPP [Lead-Based Paint Renovation, Repair and Painting Rule] rule is effectively implemented."

Unfortunately, the steps EPA laid out do not cure the problems identified and I recommend strengthening these actions in the following ways:

1. Presence of Children and Pregnant Women Must Be of Paramount Concern.

EPA is still not committed to ensuring that determinations of potential lead exposure in housing occupied by pregnant women and children are made and then effectively communicated to residents.

Preventing lead exposure in children and pregnant women is the principal public health purpose of the RPP rule. In fact, EPA's enforcement policy classifies the violation as minor if there is no occupant under 18, as significant if one or more occupants are between 6 and 17, and as major if one or more occupants are under age 6. The size of the monetary penalties in the Enforcement Response Policy are dependent on that classification.

The reason for this emphasis is clear: Lead paint in older homes, day-care centers, and other child-occupied buildings is a major lead exposure pathway for an estimated 1.4 million U.S. children every year. The thrust of the RPP rule is to ensure that repair and renovation of these older buildings is carried out in a lead-safe manner, so that lead particles do not permeate carpets, drapes, and other surfaces.

Yet, EPA continues to waffle on this point saying

“the Agency will examine that issue closely...”

That stance is insufficient. The EPA enforcement program has the statutory obligation to verify whether children or pregnant women are present in housing where lead-based paint is being disturbed. If the information is not in the inspection file then (as this disclosure demonstrates is too often the case), then EPA has must go onsite and find out. It is critical that documented presence and age, or absence of children is reflected in all inspection files.

EPA's failure or unwillingness to address this persistent gap in implementation leaves a significant danger to public health unaddressed. I would urge the Special Counsel to highlight this issue and press the Administrator to take meaningful corrective action.

2. Inspection Files Must Be Complete.

EPA blandly promises to make sure that inspection, “targeting and information activities...[are] properly entered into the data system.” Proper data entry is only the first step. Inspections need to cover all of the information necessary to determine compliance or noncompliance including the presence or absence of children and their ages.

The Agency also says that it “will implement a plan to provide for more oversight and review of the inspection files on a regular basis” but does not provide any detail. The Agency response does not reference the ICIS database to specify which inspections the investigator reviewed and does not explain ICIS's role as an EPA Headquarters method to certify that the enforcement inspections submitted by the Regions are accurately reported to Congress and others.

Without specific commitments, EPA may revert to past lax practices. It is important that EPA pledge to review its inspection files every six months to ensure that each file is complete, and contains follow-up action if warranted. Nor should such checks be limited to Region 4. In addition, these semi-annual reports should be sent to EPA Headquarters.

3. Keep Credentials Current.

While it is good to know that “the training and credentials for Region 4’s active...lead-based paint inspectors are current” it is unclear what will keep them current. EPA should implement a national program with reminders or ticklers that alert not only inspectors but also managers when the training or credential period is about to lapse. This system would create an electronic paper trail designed to keep inspector qualifications on track.

4. Accountability Measures Sorely Needed.

Throughout this process as well as the previous EPA Inspector General investigation verifying that Region 4 was destroying enforcement files, the Agency took no disciplinary or other corrective action. (IG report 01-AT-2015-CAC-0031, displayed at https://www.peer.org/assets/docs/epa/9_26_16_Full_IG_Report.pdf) This despite my frequent emails to and meetings with Management to inform them of, and show them the many deficient inspections, and enforcement follow up. EPA should address the absence of career consequences for employee lapses endangering public health by ensuring that –

- Managers and supervisors are held responsible for ensuring inspections are properly conducted, recorded, and reviewed. At the very least, documentation of this program success should be a major element in performance evaluations;
- Inspection personnel suffer consequences if their credentials and training lapse. In many cases, they are collecting pay and reimbursement for expenses to conduct invalid inspections. EPA should collect any payments for services improperly performed; and
- EPA as an organization is held to account. To accomplish this, EPA should develop a reliable, consistent, national report card that is publicly posted so that progress, or lack thereof, in this important program can be monitored by affected communities and the level of activity in each region can be readily compared. Harnessing public scrutiny is the most powerful preventive measure the Agency can employ.

Specific Comments on EPA Response:

In addition, The EPA response contains a number of inaccurate, incomplete, and/or misleading statements (detailed below) which should be corrected.

A, Training and Credentialing Deficiencies

1. Response should make clear that the inspectors did not have credentials during most inspections in 2012 through 2014. EPA should check the inspections certified in the April 21 2016 ICIS data report to see which individuals did what inspections when.
2. Not having health and safety training means that they lacked authorization to do inspections at all. For example, I provided the EPA reviewer with an email chain indicating that Owen Tilley never had credentials.

3. EPA response mischaracterizes role of temporary letters of authorization. Temporary letters of authorization are not valid for inspectors. Further, temporary letters of authorization still require a credentialed individual to accompany the inspector for the inspection to be valid.

4. With respect to credentialing inspectors, Agency guidance (1) EPA Order 3510; 2) EPA Order 3500.1a1; and 3) Final SEE Credentials Guidance) states that letters of authorization are for individuals who do not have inspections as their primary responsibility. They are, as stated by the guidance, for managers or subject matter experts who may have an occasional need to attend an inspection but they are not for full time inspectors and they are only to attend inspections with letters of authorization if they are in the company of an inspector with actual inspector credentials.

B. Inspection Deficiencies

1. This response does not address the issue of letters sent to inspected facilities claiming that no violations were found where there were violations or not enough information was available to determine that there were no violations.

2. It also does not address the deficient/incorrect affidavits sent to, or presented to facilities to sign stating that they have no violations with no supporting documentation of compliance.

3. EPA response does not address the fact that files where a tip and complaint was included should include what the deposition was. There should be notes in the file to describe the follow up or explain why there was no follow up.

4. EPA response skews the number and time-period of the inspections it reviewed. Compare the number of certified Inspections in the 1/21/16 ICIS report to the numbers on page 4 and 5 of the response.

a) Why was the “midpoint” (?) of 2013 and 2015 chosen? The results should be reported for complete years not partial years that allow for picking and choosing which inspection reports to review. Further, EPA should state the dates of the “midpoint 2013 to midpoint of 2015” and account for any missing ICIS certified inspection files as documented in the IG Report on disposed/destroyed files.

b) Total Lead-based Paint inspections from FY11 through FY15 are 643, and the RRP inspections were 567, so which 600 files were reviewed? And why were only 136 files reported as the partial set?

c) The investigation should cover more than an arbitrarily determined period of mid-2013 through 2015. It should cover complete years to avoid picking and choosing dates that have fewer deficiencies and should not arbitrarily redefine deficient inspections as targeting or outreach activities when the inspections had been certified as inspections for years prior to the investigation.

d) Compare the number of Inspections in the 1/21/16 ICIS report to the numbers on page 15 of the EPA response. The numbers on page 15 are clearly incorrect.

The first 8 pages total all lead-based paint (lbp) inspections and actions by fiscal year from FY 2011 through the first 3 or 4 months of FY 2016.

p1, FY 11 - 177 lbp inspections and 1 action

p3, FY 12 - 162 lbp inspections and 2 actions

p5, FY 13 - 105 lbp inspections and 0 actions

p6, FY 14 - 95 lbp inspections and 0 actions

p7, FY 15 - 104 lbp inspections and 0 actions

p8, FY 16 (first 3 or 4 months) 18 lbp inspections and 0 actions.

From the rest of the document I got the breakdown of RRP lbp inspections.

FY 11 about 134 RRP inspections detailed in pages 14 to 47 of 199

FY 12 about 135 RRP inspections detailed in pages 66 to 96 of 199

FY 13 about 93 RRP inspections detailed in pages 109 to 129 of 199

FY 14 about 104 RRP inspections detailed in pages 139 to 159 of 199

FY 15 about 101 RRP inspections detailed in pages 170 to 188 of 199

FY 16 (first 4 months) 18 RRP inspections detailed in pages 193 to 198 of 199

5. EPA's response states that many deficient lead-based paint (lbp) inspection reports reviewed by the investigator for this report were instead targeting and/or outreach documents and therefore were outside the scope of this review. This is not correct. They were deficient inspections that inspectors, staff, and management identified as inspections for over five years until OSC asked for a response to my disclosure. At which point the investigator identified them as too deficient to qualify as inspections.

Contrary to this claim in the EPA response, all of the files identified in the 1/21/16 ICIS report were always classified as inspection reports by the inspectors (who identified them as inspections when they entered them into the ICIS inspection database). They were cited as inspection reports by the inspectors who expensed their travel as inspection trips, not targeting and/or outreach. Management also identified them as inspections to HQ to meet EPA Region 4 targets.

Furthermore, the number of inspections is fully documented in the ICIS report (see original ICIS report of 1/21/16). There is no prior information that any of these inspections were intended to be targeting or outreach events. They were reported to HQ as LBP Inspections and, despite my informing management that they were clearly deficient; there was no attempt to classify them as anything other than enforcement inspections. They were all described as inspections and the inspectors were instructed that these were to be inspections

Therefore it is incorrect to claim that they were not intended to be inspections (or inspection reports), when an investigation into my disclosures revealed that in fact most of the reports did not include required information (NOI and evidentiary documentation) and in some cases the facilities claimed to have been inspected had never been visited.

To reclassify them after the fact as targeting reports or activities or outreach reports was done because the original intent of them being lbp inspections could not be supported based on the number of deficiencies. The EPA response should address this issue.

6. I sent many examples to the investigator and the IG office. While OSC did not require another investigation into the missing and destroyed documents, the IG report revealed that, as I alleged, additional enforcement documents, inspection reports, case and inspection log books had been destroyed to cover up inspection deficiencies. Yet this document was not reviewed for this report and nor were the missing files accounted for in Appendix B.

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