



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

December 6, 2017

OFFICE OF
THE ADMINISTRATOR

Mr. Henry Kerner
Special Counsel
U.S. Office of the Special Counsel
1730 M Street, NW, Suite 128
Washington, D.C. 20036-4505

RE: OSC File No. DI-16-3546

Dear Mr. Kerner:

This letter responds to the April 4, 2017, Office of Special Counsel referral regarding allegations received from whistleblower Elizabeth Wilde concerning the enforcement of the Lead-Based Paint Renovation, Repair and Painting Rule in the U.S. Environmental Protection Agency's Region 4 office.

As required by 5 U.S.C. § 1213 (d), the attached Agency Report provides: 1) a summary of the allegations; 2) a description of the investigative process; 3) a response to the questions posed; and 4) a description of already-accomplished and planned actions related to these matters.

I am enclosing two versions of the Agency Report. The first contains the names of EPA employees interviewed as part of the investigation into this matter. The second version is a redacted version in which the names of EPA employees have been redacted. I am requesting that your office utilize the redacted version for public release.

If you have any questions or need additional information, please do not hesitate to contact my office at (202) 564-4711.

Sincerely,

A handwritten signature in black ink that reads "Michael P. Flynn".

Michael P. Flynn
Acting Deputy Administrator

Enclosure

**Report and Findings
for
OSC File No. DI-16-3546**

I. INTRODUCTION

In a letter dated April 4, 2017, the Office of Special Counsel (OSC) informed the Agency of allegations received from whistleblower, [REDACTED] a former GS-14 regional lead advisor in EPA Region 4, concerning the enforcement of the Lead-Based Paint Renovation, Repair and Painting Rule (RRP Rule) in that Region. Specifically, [REDACTED] alleged that Region 4 was sending inspectors into the field without the proper training/credentials to conduct inspections and those inspections were substandard. The OSC directed the Agency to investigate the following allegations:

- Individuals without proper training or credentials conducted the majority of EPA Region 4's lead-based paint inspections from mid-2013 to mid-2015;
- The majority of EPA Regions 4's lead-based paint inspections for FY2012 through FY 2015 were deficient because inspectors failed to comply with the following requirements:
 - 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 Toxic Substance and Control Act (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 resident; and that EPA-certified renovators performed renovations using lead-safe work practices;
 - Determine whether children occupied the facilities being renovated.

The April 4, 2017 letter also posed additional questions which required responses from the Agency and those, as well as the responses to the above allegations, are addressed in Section IV of this report titled "Response to Allegations."

II. INVESTIGATIVE PROCESS

The investigator, [REDACTED] interviewed the following regional managers and inspectors (current and former) associated with the lead-based paint program:

- [REDACTED] (Director, Air, Pesticides, Toxics Management Division)
- [REDACTED] (Deputy Director, Air, Pesticides, Toxics Management Division)
- [REDACTED] (former Deputy Director, Air, Pesticides, Toxics Management Division)
- [REDACTED] (detailee, Deputy Director, Air, Pesticides, Toxics Management Division)
- [REDACTED] (detailee, Deputy Director Air, Pesticides, Toxics Management Division)
- [REDACTED] (Chief, Chemical Safety and Enforcement Branch)
- [REDACTED] (detailee, Chief, Chemical Safety and Enforcement Branch)
- [REDACTED] (former Chief, Lead and Asbestos Section)
- [REDACTED] (Chief, Lead and Asbestos Section)
- [REDACTED] (Senior Environmental Employee (SEE) Inspector)
- [REDACTED] (SEE Inspector)
- [REDACTED] (SEE Inspector, [REDACTED] 2015)
- [REDACTED] (Inspector)
- [REDACTED] (Inspector)
- [REDACTED] (Inspector)
- [REDACTED] (Inspector)
- [REDACTED] (Inspector)
- [REDACTED] (Inspector)
- [REDACTED] (Inspector)
- [REDACTED] (Inspector)
- [REDACTED] (SEE monitor)
- [REDACTED] (SEE)
- [REDACTED] (Training Coordinator, Chemical Safety and Enforcement Branch)

The investigator asked the same set of questions to each of the managers. The managers were not afforded anonymity, confidentiality, advance notice or any other accommodations. The questions posed to the managers sought to identify their role in the credentialing and training process for the inspectors, to discuss the process used for training and credentialing, to assess when the managers became aware of the issues concerning expired credentials/lack of training, and to discuss any efforts on their part to address those issues.

Similarly, the investigator asked the same set of questions to each of the inspectors. The inspectors were not afforded anonymity, confidentiality, advance notice or any other accommodations. Their questions, however, differed slightly from those asked of the managers. The questions posed to the inspectors sought to determine how long they had been an inspector, to ascertain whether their credentials or training had ever lapsed, to learn (if

credentials and/or training had elapsed) whom they notified and to discuss the inspection process including ways to determine whether a child was present at the renovation site.

Consistent with OSC's policy to interview a whistleblower who has consented to the release of his/her name, the investigator interviewed ██████████ by phone on June 1, 2017 and June 22, 2017 and her Public Employees Environmental Responsibility attorney, ██████████ was on both calls.

Following the interviews, each interviewee,¹ manager, inspector and the whistleblower, were provided with a copy of the investigator's interview notes and given the opportunity to review and clarify areas where necessary. The investigator received a response from each interviewee by email.

The investigator also consulted managers and staff within the Office of Enforcement and Compliance Assurance (OECA) having responsibilities related to lead-based paint inspections and enforcement cases to determine and understand the credentialing, training, inspection requirements and case development process for lead based paint inspections. OECA is responsible for managing, at the national level, the training and credentialing requirements for the Agency's inspectors.

In addition to the interviews, the investigator conducted an extensive review of each file within the timeframes identified to collect information responsive to the allegations and questions contained in the referral. More than 600 files were reviewed for this report. Files from tips and Information Request Letters (IRLs), where an on-site inspection was not conducted, have been excluded from this report.

III. BACKGROUND ON RRP & EPA

In the 1990's, amid growing concerns with the number of children diagnosed with elevated lead blood-levels, Congress held hearings and determined that household dust containing lead was the most common exposure pathway for children.² Cleaning and renovation activities further increased the threat of lead-based paint exposure to both children and adults.³ To address these concerns, Congress passed legislation which amended the Toxic Substance and Control Act (TSCA) and directed EPA to promulgate regulations to protect children and adults from the lead-based paint hazards generated from renovation and remodeling activities in the housing arena.

¹ ██████████ is ██████████ and did not receive an email copy of his interview.

² Lead Renovation, Repair, and Painting Program, 73 Fed. Reg. 21,692 at 21,693. (April 22, 2008).

³ Id.

Before EPA promulgated the regulations, it conducted a number of studies to gauge the amount of lead dust released from specific renovation activities, to ascertain the extent of lead exposure for those conducting the renovation/remodeling activities, and to assess the relationship between those activities and children's blood-lead levels. Based upon these studies and others, as well as comments received during the proposed rulemaking, EPA identified and defined the lead safe work practices and standards necessary to reduce children's and adults' exposure to lead-based paint hazards during renovation and remodeling activities.

As promulgated by 40 C.F.R. § 745, the Lead-Based Paint Renovation, Repair and Painting Rule's (RRP) purpose is to ensure that: renovators/firms provide owners and occupants of "target housing and child-occupied facilities" with lead-based paint hazard information before renovations begin; those conducting the renovations are trained; renovators and firms are certified; and lead-based paint work practices are followed during the renovations. EPA inspectors inspect firms and facilities to determine their compliance with the RRP.

The RRP assumes the presence of lead-based paint unless testing indicates otherwise. For this reason, lead-safe work practices should be followed by renovators and firms. By complying with the requirements of the RRP, renovators minimize children's and adults' exposure to lead based paint hazards.

IV. RESPONSE TO ALLEGATIONS

The following pages represent the Agency's findings and response to the allegations and specific questions contained in the April 4, 2017 referral letter. In reaching these findings, the investigator did not rely on any previous inquiries. The findings and resulting response represent an independent assessment of the data and material collected, as referenced above, during this investigation.

A. ALLEGATIONS

Allegation 1. Individuals without proper training or credentials conducted the majority of Region 4's lead-based paint inspections from mid-2013 to mid-2015.

RESPONSE

From mid-2013 to mid-2015, two (2) individuals working under the Agency's Senior Environmental Employment Program (SEEs)⁴ and four (4) Federal inspectors conducted 136

⁴ The Senior Environmental Employment (SEE) Program provides an opportunity for retired and unemployed Americans age 55 and over to share their experience with the U.S. EPA. See <https://www.epa.gov/careers/senior->

lead-based paint inspections. During that time period, the two (2) SEEs, [REDACTED] and [REDACTED] accounted for 84% of the inspections. The remaining 16% of inspections were conducted by [REDACTED], [REDACTED], [REDACTED] and [REDACTED] the four (4) Federal inspectors.

Federal Inspectors' Training and Credentialing

The Office of Compliance (OC), within OECA is responsible for developing and implementing policies and requirements relating to EPA inspectors and non-EPA inspectors with Federal credentials who conduct inspections on behalf of EPA. EPA inspectors are responsible for meeting a number of requirements in order to obtain and maintain an inspector credential under EPA Orders 3510 and 3500.1.

Training. EPA Order 3500.1 provides the minimum training requirements for EPA employees to obtain and maintain the authority to conduct civil compliance inspections and other field activities. In accordance with Order 3500.1, inspectors must complete Basic Inspector Training, initial Health and Safety Training and annual Health and Safety Refresher Training, media-specific training; familiarize themselves with a number of reading materials, and complete a number of on-the-job trainings.

Based upon interviews with the Training Coordinator and the Federal inspectors as well as a review of the training information maintained for each inspector, the investigator determined that the four (4) Federal inspectors completed the required training, with the exception of the annual Health & Safety (H&S) Refresher Training.⁵

Credentials. EPA Order 3510⁶ “. . . establishes the roles and responsibilities of EPA organizations to issue and manage inspector credentials and Temporary Letters of Authorization (LOA).” The Order provides EPA’s policy for who may receive credentials and be considered qualified to receive credentials and references the training requirements in Order 3500.1.

environmental-employment-see-program. EPA Region 4 uses Federal staff and SEEs to conduct its lead-based inspections. As grantees of EPA, SEEs are not the same as Federal employees and are unable to perform inherently governmental functions, such as functioning as timekeepers, creating Agency policy, or encumbering the Agency for the payment of debts. SEEs, however, can conduct inspections.

⁵ For mid-2013 to mid-2015, the investigator determined that inspectors had completed their initial H&S training but there were no records for their annual Refresher H&S Training, prior to FY 2015. OC advised the investigator that there is no written policy on whether a credential is invalid if an individual missed the annual Health and Safety Refresher Training, however, if the inspectors had not completed the annual H& S Refresher Training, they should not have been in the field conducting inspections.

⁶ In its purpose, the Order specifically states that it “is not intended to create rights or obligations enforceable against or by any other parties. Failure to comply with this Order cannot be used by any party as a defense in an enforcement action.”

A credential, as defined by EPA's Security Manual, is "a testimonial showing that a person is entitled or has a right to exercise official power." To obtain an initial credential, inspectors must also have a proper position description and background investigation, complete a job hazard analysis (required by EPA Order 1440.1, Safety Health and Emergency Management Program (SHEMP) Guideline 56 and 29 CFR § 1910.120), and certify to receipt and maintenance of their credential. To maintain their inspector credentials over time, inspectors must complete annual health and safety training, media-specific training, skill refresher training, and maintain copies of their training completion certificates.

Based upon discussions with OC and a review of relevant files, all four (4) Federal inspectors did not meet the requirements for maintaining their credentials during a period of time between mid-2013 to mid-2015 because each inspector did not have documentation for completing his/her annual H&S Refresher Training from June 2013 to September 2014.⁷

SEE Inspectors' Training and Credentialing

Training. As indicated above, EPA Order 3500.1 provides the minimum training requirements for EPA employees to obtain and maintain the authority to conduct civil compliance inspections and other field activities. Under Order 3500.1, SEEs are required to complete the same training as the EPA employees.

Based upon interviews with the Training Coordinator and the SEE inspectors as well as a review of the training documentation maintained for each inspector, the investigator determined that the two (2) SEE inspectors, [REDACTED] and [REDACTED] completed the required training, except the annual H&S Refresher Training.

Credentials. During 2012 and extending through 2013, OC was drafting the "Final Guidance for Issuing Federal EPA Inspector Credentials to Senior Environmental Employment (SEE) Program Enrollees to Conduct Inspections on Behalf of EPA (Guidance)." The Guidance describes the requirements and processes regional and headquarters EPA employees must meet and follow in order to issue and manage Federal EPA Inspector Credentials and Temporary Letters for Authorization (LOAs) for SEEs. Order 3510 provides for LOAs which authorize "the bearer to conduct all or part of a compliance inspection/field investigation under a specific statute," to be issued in emergency situations when time does not allow for a formal credential to be issued. See Order 3510 at 3. OC ultimately finalized the Guidance in September 2013. (See Appendix A for the chronology of events associated with the

⁷ While the time period of concern is mid-2013 to mid-2015, September 2014 is the end date selected for determining compliance with the training requirements for H&S. The inspectors had until the end of FY 2015 to complete the requirement. FY15 began on October 1, 2014 and the inspectors completed the H&S Refresher Training for FY 15.

credentialing of [REDACTED] [REDACTED] and the implementation of the Guidance's requirements).

Prior to September 2013, the Agency did not have specific guidance for issuing credentials to SEEs and the credentialing process for SEEs varied across the nation. Some Regions had EPA-like credentials for their SEEs and some allowed SEEs to use their building badges as credentials. From September 2013 through March 2015, the Agency was in a transition process for issuing credentials to SEE inspectors and, as per above, used different methods.

[REDACTED] (Chief, Chemical Safety and Enforcement Branch, Air, Pesticides, Toxics Management (APTM) Division), [REDACTED] (Chief, Lead and Asbestos Section, Chemical Safety and Enforcement Branch, APTM Division) and [REDACTED] (SEE Monitor for [REDACTED] and [REDACTED]) indicated that they were aware that the SEE inspectors' credentials were expiring or had expired during the September 2013 and March 2015 timeframes. Both [REDACTED] and [REDACTED] indicated that they relied on the inspectors to notify them when there was an issue with their credentials and [REDACTED] specifically noted that there was no tracking system in place at that time.

Both [REDACTED] and [REDACTED] sought to address the credentialing issue by obtaining LOAs. In his interview, [REDACTED] indicated that he applied the LOA language in Order 3510 to the SEEs, while awaiting their formal credentials. According to [REDACTED] [REDACTED] he requested LOAs for both [REDACTED] and [REDACTED]

[REDACTED] and [REDACTED] received two LOAs. The first LOA was requested on June 12, 2013 and received on June 26, 2013. The first LOA for both SEE inspectors ran from June 26, 2013 through September 23, 2013. The second LOA was requested and received on April 11, 2014. The second LOA for both SEE inspectors was effective from April 11, 2014 until July 9, 2014.

OC advised that LOAs can be issued when waiting on a credential, as long as the required training is complete and the position description for the SEE is current. Because there is no record that [REDACTED] and [REDACTED] completed their annual H&S training, they should not have received the LOAs or conducted inspections.

Under 15 U.S.C. § 2610 (2016) titled "Inspections and subpoenas," the Administrator's duly designated representative is authorized to conduct inspections ". . . upon the presentation of appropriate credentials and written notice." 15 U.S.C. § 2610 (a). (emphasis added). The (4) Federal inspectors and (2) SEE inspectors appear to have violated 15 U.S.C. 2610 by

conducting inspections from June 2013 through September 2014 without completion of the required annual H&S training.

Summary for Allegation 1. The referral alleged that individuals without proper training or credentials conducted the majority of EPA Region 4's lead-based paint inspections between mid-2013 and mid-2015, and the investigator determined the following:

- *All four (4) Federal inspectors, [REDACTED] and [REDACTED] did not meet the training and credentialing requirements from June 2013 to September 2014. Documentation was unavailable to confirm their completion of the H&S Refresher Training.*
- *Both SEE inspectors, [REDACTED] and [REDACTED] did not meet the training and credentialing requirements, from June 2013 to September 2014. Documentation was unavailable to confirm their completion of the H&S Refresher Training.*

Allegation 2. The majority of EPA Region 4's lead-based paint inspections for FY 2012 through FY 2015 were deficient, because inspectors failed to comply with the following requirements:

- 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 that EPA-certified renovators performed renovations using lead-safe work practices;
- Determine whether children occupied the facilities being renovated.

RESPONSE

The RRP Rule directs the inspector in determining an owner/operator's or renovator's compliance status. EPA has developed guidance, based upon the RRP's purpose, to assist lead-based paint inspectors in conducting inspections. The responses below discuss each allegation and the related, specific requirements of the RRP Rule.

Required Notice of Inspection and Consent for Entry Documentation

"The Inspection Manual for Renovation, Repair and Painting Rule" (RRP Inspection Manual) is used to assist inspectors in conducting inspections and monitoring compliance with the RRP. Specifically, the Manual's Chapter 3 provides guidance for presenting notice of

inspection and credentials during an inspection and lists steps⁸ the inspector should take upon his/her arrival at the facility.

The inspector should request that the owner/agent sign the Notice of Inspection (NOI) giving their consent to the inspector's entry. Most of the Region 4 lead-based paint inspectors, when asked about the inspection process during their interviews, mentioned the process identified in the Manual.

While a review of the files should have readily revealed that an NOI was provided, the investigator encountered a few challenges in making that determination. A number of files contained limited documentation and/or often no detailed inspection notes. After consulting with managers in OC and a manager in Region 6, the investigator determined that a number of inspections were not in fact inspections, but either targeting activities or attempted inspections. Targeting/information gathering activities⁹ and attempted inspections¹⁰ would not typically have an NOI or receipt for documents included in the files.

Because actual inspections were not completed or could not be determined as completed, the investigator removed the targeting activities and attempted inspections, as well as files that only contained a data entry sheet¹¹ from the universe of inspection files. As a result, the total files for FY 12 – FY 15 were reduced from 349 to 232 for that time period.

A review of the remaining files revealed that inspectors obtained NOIs for 93.1%¹² of inspections conducted from FY12 to FY15.

⁸ Steps include that the inspector should: introduce his/herself to the owner, operator or official in charge; present EPA credentials; discuss the purpose for the inspection; and present the owner/agent authorized to give consent a completed Notice of Inspection (NOI).

⁹ Targeting activities are used by inspectors to collect information about a particular facility before an inspection is conducted. Where no NOI was present in a file, the investigator determined that 47 of those files should have been categorized as targeting/information gathering activities. Those files contained things like pictures of the renovators' vehicles, pictures of the property, and/or cryptic notes from the inspector. A few of these files were among those reviewed and identified by [REDACTED] as having scarce information.

¹⁰ Eleven additional files appear to have been "attempted inspections" where no NOIs were issued. Some notes indicate the owner would not meet with the inspector, there was no answer at the door, or the worker did not speak English. Based upon discussions with the Toxics and Pesticides Branch Chief in Region 6, and the Deputy Director for OC, attempted inspections, such as those, would not be entered in the data system as an inspection. The inspector, typically, makes a note to the file indicating that the inspection was attempted.

¹¹ There were 18 additional files where there was only a data entry sheet. Some of these same files were also reviewed by [REDACTED]. No inspector notes, inspection forms, pictures or anything else was contained in these files. Without additional information, the investigator could not determine whether there was an actual inspection conducted at those locations.

¹² Of 232 cases in the universe, 216 files contained NOIs.

Review or Collection of Documentary Evidence

The referral alleged that the inspectors failed to “. . . 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 that EPA-certified renovators performed renovations using lead-safe work practices.” Exhibit 4 of the RRP Inspection Manual supplements the Manual and guides inspectors in the number and type of records to review in determining a facility’s compliance with the RRP rule.

Further, the supplement provides a guideline for the number of documents to be obtained by the inspector and specifically states that “[a]n inspector must review *enough* records so that the Region can accurately determine the nature and extent of any noncompliance, and have adequate proof for potential enforcement.”

As stated above, 76 cases from this time period were removed from the universe of files reviewed as part of this investigation. In addition to those files, 40 files contained an affidavit from the owner indicating that the firm/business did not perform work under the RRP. Since no information was collected in those cases, those files were removed from this investigation’s tally.

The total number of files, as a result, was reduced further to 232 files. Of the remaining files reviewed for this time period, 75% of the files (174 files) included information sufficient to determine compliance with the RRP. Some of the documentation in the files included: firm certifications, renovator certifications, pamphlet forms, invoices, pictures, job logs, post-renovation checklists, sampling and test kit results. The files also included inspection notes and environmental lab reports. There were some files where the inspector requested required information and the firm did not have the records requested. Some of those files had Consent Agreements and Final Orders (CAFOs). A CAFO indicates that the Region, based upon the information reviewed/collected, determined that the firm/renovator violated the RRP and an enforcement action was taken. The remaining 25% (58) of the files lacked documentation in the file.

Renovator/Firm Responsibilities Regarding Facilities Containing Occupants Under the Age of 18

In regard to the issue of children occupying renovated facilities, the referral claimed that “[t]he RRP Inspection Manual directs inspectors to determine if there are any occupants under the

age of 18.”¹³ While the RRP Inspection Manual suggests that it is important for inspectors to determine if there are any occupants under the age of 18,¹⁴ the RRP Inspection Manual does not include such a requirement of inspectors and states that it “is not a regulation and, therefore, does not add, eliminate or change any existing regulatory requirements. . .” (See Manual at Disclaimer, cover page).

Specifically, it is the responsibility of the renovator/firm to provide to the adult owner/occupant of the single or multi-family housing the pamphlet, “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*” (Pamphlet) and obtain his/her written acknowledgement for the receipt of the Pamphlet prior to beginning of any renovations. For “child-occupied facilities,”¹⁵ the renovator/firm must “provide, or make available, general information on the renovation and the Pamphlet to parents or guardians of children under age 6 using the child-occupied facility.”¹⁶ In fact, each of the inspectors interviewed, along with staff from OC and the Toxics and Pesticides Branch Chief in Region 6, confirmed that inspectors will not know whether children are present at an inspection site unless the renovator/firm has obtained that information from the occupants and it is included in the renovator/firm files.

For this reason, during an RRP inspection, the inspector’s focus is on whether the renovators complied with the regulations and required standards, including providing the Pamphlet to the owner/occupant and obtaining his/her acknowledgment signature as it is the renovators’ responsibility to use lead-safe work practices to protect the children and adults that occupy the facility being renovated. The presence of children was not typically included in the information collected by the inspectors.¹⁷ The lack of this information, however, is not a violation of the guiding regulation.

Nevertheless, the Agency recognizes that the RRP Inspection Manual appears to suggest that inspectors should determine if there are occupants under the age of 18 at the site and it appears to require more of the inspectors than the guiding regulations. This is an especially important issue relating to human health and safety that requires clarification. As noted in the final

¹³ The information relied upon in the RRP Manual is found in the section “Inspections at Worksites Where Regulated Activities Are Occurring.” That section focuses on work site inspections where the inspector likely has an opportunity to engage directly with the owner or occupant and collect additional information about the renovation/remodeling project.

¹⁴ See Manual at Chapter 3, page 18.

¹⁵ As defined by 40 CFR 745.83, a child-occupied facility is “a building, or portion of a building, constructed prior to 1978 that is visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.”

¹⁶ See 40 CFR 745.84(a)(1).

¹⁷ Six (6) files for this time period included information regarding children.

section of this report, the Agency will work to conduct a review of guidance to ensure clarity on this point.

Summary for Allegation 2. The referral alleged that the majority of EPA Region 4's lead-based paint inspections for FY 2012 through FY 2015 were deficient because inspectors failed to comply with the requirements below. However, the investigator determined that the majority of inspections during that time period were not deficient.

In the bullets below, the referral's claims appear first followed by the investigator's response in bold:

- The Agency failed to obtain the required Notice of Inspection and Consent for Entry documentation.

Agency's Response: Inspectors obtained NOI's for 93.1% of inspections conducted from FY 12 to FY 15.

- The Agency failed to 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 that EPA-certified renovators performed renovations using lead-safe work practices.

Agency's Response: Of the reviewed files for FY 12 - FY15, 75% contained documentary evidence to verify a firm's compliance with the RRP.

- The Agency failed to determine whether children occupied the facilities being renovated.

Agency's Response: The Agency inspectors collected available information from the renovators relating to occupants under the age of 18 but the inspectors were not required to determine whether there were occupants under the age of 18. In this regard, it appears there is inconsistency between the RRP Inspection Manual and the guiding regulations. During an RRP inspection, the inspector's focus is on whether the renovator complied with the regulation and required standards. By complying with the RRP, the renovator reduces the exposure to lead-based paint for both children and adults.

B. SPECIFIC REFERRAL QUESTIONS

Credentials (Time period: January 1, 2012 – April 4, 2017)

1. Were lead-based paint inspections conducted by individuals who lacked credentials, or whose credentials had expired (i.e. “improperly credentialed”)?

Agency’s Response: Yes. Under 15 U.S.C. § 2610, the Administrator’s duly designated representative is authorized to conduct inspections “. . . upon the presentation of appropriate credentials and written notice.” (emphasis added). It appears the inspections conducted by the four Federal inspectors and two SEE inspectors without the required annual H&S Refresher Training violated 15 U.S.C. § 2610.

2. How many individuals conducted inspections while improperly credentialed?

Agency’s Response: Six: Two (2) SEEs, [REDACTED] and [REDACTED] and four (4) Federal inspectors, [REDACTED] [REDACTED] [REDACTED] and [REDACTED]

3. How many such inspections were conducted?

Agency’s Response: The six inspectors conducted 136 inspections.

4. When did management become aware that individuals conducting inspections were improperly credentialed?

Agency’s Response: In a June 11, 2013 email, [REDACTED] (Chief, Lead and Asbestos Section) asked [REDACTED] (SEE Monitor) how to obtain credentials for [REDACTED]. During their interviews, managers provided various dates, from 2014 to the present, for when they became aware of the credentialing issue.

[REDACTED] indicated that he told managers prior to the expiration of his credentials on April 30, 2013. [REDACTED] also indicated that he advised managers when his letters were about to expire. Because there is no definitive date for these reported disclosures, the time period could range from at least April 2013 – June 2013.

In January 2015, when [REDACTED] developed the Training Tracker for the Branch, at least, [REDACTED] and [REDACTED] were aware of the training status for each of the inspectors, Federal and SEEs, related to their completion of the annual H&S training. Every inspector completed the annual H&S training requirement in FY 2015.

5. Which managers were aware that individuals conducting inspections were improperly credentialed?

Agency's Response: [REDACTED] and [REDACTED] indicated that they notified [REDACTED] [REDACTED] and [REDACTED] (SEE Monitor) about their expired credentials. In her February 23, 2015 email to [REDACTED] [REDACTED] copied [REDACTED] [REDACTED] and [REDACTED] on an e-mail message which related her concerns about the lead-based paint program and the credential status of inspectors. It is unclear whether the managers knew, prior to January 2015, that the inspectors had not documented completion of their H&S refresher training. In their interviews, none of the managers indicated that they knowingly sent individuals into the field while improperly credentialed.

6. What actions did those managers take to remedy the issue?

Agency's Response: Both [REDACTED] and [REDACTED] sought to address the credentialing issue by obtaining LOAs until the Guidance was finalized. From March 2014 – March 2015, the Region worked with Senior Service America Inc. and HQ to obtain credentials for the SEEs. This was a lengthy process due to funding issues and the more extensive background check now required for the SEEs. With the development of the training tracker in January 2015, the managers tracked the inspectors' completion of their annual H&S refresher training in FY 15.

7. Who was involved or consulted in authorizing any improperly credentialed individuals to conduct inspections?

Agency's Response: Each of the managers, between mid-2013 and mid-2015, indicated that they knew of no one who would authorize an inspector to go into the field without proper credentials. Both [REDACTED] and [REDACTED] indicated that they relied on the inspectors to notify them when there was an issue with their credentials. During his interview, [REDACTED] noted that there was no tracking system in place at that time.

8. If any EPA employees or contractors were issued interim or temporary credentials to allow them to conduct inspections while they were not otherwise trained or credentialed, what authority did the EPA have to authorize such interim or temporary credentials, and for how long?

Agency's Response: EPA Order 3510 “. . . establishes the roles and responsibilities of EPA organizations to issue and manage inspector credentials and Temporary Letters of Authorization.” Order 3510 provides EPA's policy for who may receive credentials and who

may be considered qualified to receive credentials and it also references the training requirements in Order 3500.1.

9. How long did each of those employees, in fact, have interim or temporary credentials?

Agency’s Response: Region 4 issued two LOAs to the SEEs conducting inspections; the first LOA for both SEE inspectors ran from June 26, 2013 through September 23, 2013 and the second LOA for both SEE inspectors was effective from April 11, 2014 until July 9, 2014.

Documentation (Time period: FY12 – FY17)

The following charts represent the information responsive to the questions posed in the referral letter. Data for FY17, in the charts below, is current through April 4, 2017 – the date of the referral letter. While the information below is responsive to the questions posed by OSC, the absence of any information in the files does not necessarily indicate a deficiency in the inspection process. The lack of information in the file could indicate potential violations with the firm/owner/operator that was inspected.

RESPONSIVE DATA

How many lead-based paint inspections did EPA Region 4 conduct each year, from FY 2012 to FY 2017?

Inspections Conducted by Fiscal Year

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 78 | 63 | 47 | 44 | 77 | 55 |

For each year, how many inspections files from that year contain a Notice of Inspection and Consent for Entry Documentation form?

Notice of Consent Received

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 76 | 60 | 37 | 43 | 74 | 53 |

For each year, how many inspections files from that year contain a Receipt of Documents form?

Receipt for Documents¹⁸

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 65 | 55 | 19 | 25 | 57 | 38 |

For each year, how many inspection files from that year contain records or reports certifying that lead-based paint was not present?

Reports/Records Certifying¹⁹ No Lead

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 18 | 9 | 7 | 6 | 6 | 6 |

For those files that do not certify that lead-based paint was not present, how many contain documentation that a certified renovator was assigned to the relevant project? (Note: The chart below also incorporates documentation that the certified renovator performed or directed workers who performed all of the tasks described in 40 C.F.R. § 745.85(a))

Certified Renovator Assigned/Performed or Directed²⁰ (represents those cases with possible lead where a certified renovator was assigned/performed or directed renovation).

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 19 | 32 | 20 | 14 | 30 | 13 |

For those files that do not certify that lead-based paint was not present, how many contain documentation that the certified renovator provided on-the-job-training for workers used on the relevant project?

On-the-job Training (OJT) Provided²¹ (represents those cases with possible lead and OJT)

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 2 | 16 | 8 | 3 | 5 | 5 |

¹⁸ Receipts are not statutorily required but serve to document where the information came from and provide a record for the renovator. Note: there were some files where the owner/operator indicated the information would be mailed or emailed.

¹⁹ This count represents those case files that had sampling results. It does not indicate an official certification was received but, that sampling was conducted and the results are in the file. In addition, if the file reviewed included multiple projects with both positive and negative results, that is not reflected in the count.

²⁰ Two questions addressed in this chart.

²¹ On-the-Job Training log is only required for those projects where workers are being trained.

For those files that do not certify that lead-based paint was not present, how many contain documentation that the certified renovator performed the post-renovation cleaning verification described in 40 C.F.R. 745.85(b)?

Post-Reno Conducted (represents those cases with possible lead and post renovation)

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 12 | 21 | 10 | 7 | 15 | 12 |

For those files that do not certify that lead-based paint was not present, how many contain documentation as to whether there were any occupants under the age of eighteen on the relevant premises²²?

Occupants under the Age of 18 (represents those cases with possible lead and children's presence indicated. For this reason, the count for children below differs from the count mentioned above.)

| FY12 | FY13 | FY14 | FY15 | FY16 | FY17 |
|------|------|------|------|------|------|
| 0 | 3 | 1 | 1 | 0 | 0 |

V. LISTING OF VIOLATIONS OF LAW, RULE, OR REGULATION

The four (4) Federal inspectors and two (2) SEE inspectors did not meet the training and credentialing requirements, from June 2013 to September 2014, because they failed to provide documentation certifying their completion of the annual H&S Refresher Training.

VI. SUMMARY OF FINDINGS

Allegation 1: The investigation revealed that four Federal inspectors, [REDACTED] and [REDACTED] along with two SEE inspectors, [REDACTED] and [REDACTED] conducted inspections with improper or expired credentials from mid-2013 through September 2014, an apparent violation of 15 U.S.C. § 2610. In regard to training, the four (4) Federal inspectors and the two (2) SEES completed the required training; however, in regard to the annual H&S Refresher Training, no documentation exists to verify that training's completion.

Allegation 2: The investigation revealed that the majority of the inspection files contained NOIs and documentary evidence to verify a firm's compliance with the RRP rule. The investigator determined that 75% of the reviewed files contained sufficient information to

²² The regulations do not require inspectors to determine whether children are present at the renovation site.

determine compliance. With regard to children occupying the facilities being renovated, the presence of children was not typically included in the information collected by the inspectors.²³ The lack of this information, however, is not a violation of the guiding regulation.

Specific Referral Questions: See the above responses and data tables.

VII. ACTIONS TAKEN/PLANNED

Since the transition period for the Guidance, October 1, 2013 through March 30, 2015, both OC and Region 4 have implemented changes to better monitor the credentialing process for SEE inspectors. Most importantly, in June 2017, OC implemented a national inspector audit program through which it reviews all inspector-related credentialing requirements. The draft report detailing the results of that audit is pending finalization. One issue revealed during the audits related to the completion of annual H&S training. OC plans to examine credentialing and annual H&S Refresher Training at the national level in 2018.

Additionally, in December 2014, Region 4 designated [REDACTED] Training Coordinator for the Chemical Safety and Enforcement Branch, to track and review the training and credential requirements for the Branch. Additionally, an internal tracker for the training status of each inspector was developed by January 2015. These important oversight measures will help to ensure that credentialing and training are current for all of the Region's inspectors within the Chemical Safety and Enforcement Branch. In fact, at this time, the training and credentials for Region 4's active Federal and SEE lead-based paint inspectors are all current.

Though these important oversight measures have been instituted and appear to have resolved the training and credentialing issues, the Agency will conduct an overall review of the Region's lead-based paint inspection program to identify any remaining gaps in the program and possible areas for further improvement.

The Agency also recognizes that it should complete additional steps to ensure that its work is compliant with guiding statutory and regulatory authorities.

- First, a point raised by the whistleblower is that the RRP Guidance Manual appears to provide for the inspectors' obligations in regard to identifying if children under the age of 18 are present in a facility being renovated. In this way, the RRP Inspection Manual appears to extend the Agency's obligations more than the regulations require. As such, the Agency will examine that issue closely to resolve this apparent disparate guidance.

²³ Six (6) files for this time period included information regarding children.

- Next, given the fact that the investigator's extensive research showed that there were some files with no follow-up actions or no timely follow-up actions, the Agency will implement a plan to provide for more oversight and review of the inspection files on a regular basis.
- Additionally, the report also revealed that targeting and information gathering activities, as well as attempted inspections, were improperly entered into the data system as inspections. The Agency will direct Region 4 to take appropriate actions to ensure this information is properly entered into the data system.

The Agency acknowledges that these are serious matters and is committed to making needed improvements to ensure that the RRP rule is effectively implemented.

**APPENDIX A - Chronology of Events for the SEE Credentialing Guidance
and
Region 4's SEE Credential Status**

| Date | Event |
|--------------------|---|
| August 18, 2010 | ██████████ receives his credentials. |
| July 10, 2012 | Justification Memo signed by Regional Administrator's delegate, ██████████ for ██████████ |
| April 30, 2013 | ██████████ credentials expire. He indicated that he notified managers ██████████ and ██████████ prior to the expiration. |
| June 11, 2013 | ██████████ contacts ██████████ (SEE Monitor) about obtaining credentials for employees including ██████████ |
| June 26, 2013 | The first 90-day LOA was signed for both ██████████ and ██████████ by a delegate for the Regional Administrator. |
| September 23, 2013 | Expiration date for ██████████ and ██████████ first LOA. |
| September 30, 2013 | Issue date for "Final Guidance for Issuing Federal EPA Inspector Credentials to Senior Environmental Employment (SEE) Program Enrollees to Conduct Inspections on Behalf of EPA." (Guidance) |
| October 1, 2013 | Effective date for above Guidance. Transition period for SEEs' credentials began on this date through March 2015. |
| March 14, 2014 | As required by the Guidance, ██████████ forwards Risk Assessments to Senior Service America, Inc. (SSAI) for ██████████ and ██████████ and indicates revised Position Descriptions will be forwarded by March 21, 2014. |
| March 30, 2014 | Original date in the Guidance for revoking LOAs and credentials if MBIs had not been submitted. |

| Date | Event |
|--------------------|--|
| April 11, 2014 | Memorandum issued to extend the deadline for submitting MBI paperwork to June 30, 2014. If no paperwork was submitted, the LOAs and credentials were to be revoked and the contractor or SEE enrollee would not be allowed to conduct or participate in inspection-related activities until their application was submitted. |
| April 11, 2014 | The second 90-day LOA signed for both [REDACTED] and [REDACTED] by Division Director, [REDACTED] |
| June 30, 2014 | Deadline for submitting the MBI paperwork. |
| July 9, 2014 | Expiration date for [REDACTED] and [REDACTED] second LOA. |
| September 11, 2014 | The Region funds the MBIs for [REDACTED] and [REDACTED] |
| December 17, 2014 | The EPA Office of Inspector General Hotline receives a complaint concerning Region 4's inspectors' failure to show their credentials during lead-based paint inspections. |
| January 28, 2015 | [REDACTED] expresses concerns to [REDACTED] (Section Chief) and [REDACTED] (Branch Chief) about the validity of inspections without inspectors having current credentials. |
| February 23, 2015 | In a meeting with [REDACTED] (Division Director), [REDACTED] voices concern about the credential status of some inspectors and the enforcement program. On the email chain recapping her meeting with [REDACTED], [REDACTED] also included [REDACTED] (Deputy Director), [REDACTED] (Deputy Director), [REDACTED] (Branch Chief) and [REDACTED] (Section Chief). |
| March 11, 2015 | Both [REDACTED] and [REDACTED] receive credentials. |

APPENDIX B – Index of Documents Reviewed

1. Office of Special Counsel – Letter of April 4, 2017
2. RRP Inspection Manual (2016)
3. 40 CFR 745, Subpart E – Residential Property Renovation
4. Douglas Zmorzenski Transmittal Memorandum, December 24, 2014 “*Office of Inspector General Hotline Complaint 2015-066*”
5. [REDACTED] email Response to Office of Compliance’s Inquiry re: EPA OIG Hotline 2015-066
6. EPA Order No. 3510, “*EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes and other Compliance Responsibilities*” 10/31/2012
7. EPA Order No. 3500.1, “*Training Requirements for EPA Personnel who are Authorized to Conduct Civil Compliance Inspections/Field Investigations and EPA Inspector Supervisors*”
8. Lead-Based Paint Inspection Files from FY2012 – FY 2017 (April 4, 2017)
9. Training Files for Inspectors
10. Lisa Lund Memorandum, September 30, 2013, “*Final Guidance for Issuing Federal EPA Inspector Credentials to Senior Environmental Employment (SEE) Program Enrollees to Conduct Inspections of Behalf of EPA*”
11. Guidance for Issuing Federal EPA Inspector Credentials to Senior Environmental Employment (SEE) Program Enrollees to Conduct Inspections of Behalf of EPA
12. CSEB Credentials Tracking Spreadsheet
13. Letter of Authorization for [REDACTED] June 26, 2013
14. Letter of Authorization for [REDACTED] June 26, 2013
15. Letter of Authorization for [REDACTED] April 11, 2014
16. Letter of Authorization for [REDACTED] April 11, 2014
17. Anthony G. Toney, Memorandum, (no date), “*Justification for Credential Senior Environmental Employee*”
18. “*Acknowledgement for the Return of U.S. EPA Inspector Credentials*” for [REDACTED]
19. [REDACTED] Memorandum, July 20, 2010, “*Request for Credentials*” ([REDACTED])
and [REDACTED]
20. [REDACTED] Memorandum, (no date, signed on March 2, 2015), “*SEE Employee Credentials*” for [REDACTED]
21. [REDACTED] Memorandum, (no date, signed on March 2, 2015), “*SEE Employee Credentials*” for [REDACTED]
22. List of Lead -Based Paint Managers and Inspectors from January 2012 – June 2017 document
23. Documents and emails provided by [REDACTED]