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

DEC 20 2007

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revisions to the 2000 Section 1018 – Disclosure Rule Enforcement Response Policy

FROM: Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division

TO: Regional Counsel, Regions 1 – 10
Regional Enforcement Division Directors, Regions 1, 2, 4, 6 and 8
Toxic Substances Division Directors, Regions 1-10

This memorandum transmits to you the final revised and consolidated Enforcement Response and Penalty Policy (ERPP) for actions taken under Title X: Residential Lead-Based Paint Hazard Reduction Act of 1992, (Title X), 42 U.S.C. § 4851, as enforced under § 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689. This document, which is effective immediately, includes several revisions to the February 2000 ERPP, the most significant of which are referenced below. These revisions reflect case law and EPA policy that has evolved over the last seven years.

I would like to express my appreciation to the regional workgroup members whose persistence, hard work and informative review over the past nine months greatly improved the clarity of this policy, while maintaining the flexibility to address diverse regional housing situations. The workgroup crafted a document that significantly improves the ERPP and makes it an up-to-date, practical guide for the assessment of TSCA Lead-Based Paint penalties. In finalizing this document, the Office of Civil Enforcement, Waste and Chemical Enforcement Division, coordinated with TSCA regional enforcement managers, and relevant Headquarters offices.

As you know, the Enforcement Response and Penalty Policy provides guidance on selecting the appropriate response and developing penalty amounts that should be sought in administrative actions filed under TSCA and penalty amounts that would be acceptable in settlement of administrative and judicial enforcement actions under TSCA. The policy is immediately applicable and should be used to calculate penalties sought in all TSCA Lead-Based Paint Disclosure administrative actions or accepted in settlement of both administrative and judicial civil enforcement actions brought under the statute after the date of the policy, regardless of the date of the violation. To the maximum extent practicable, the policy shall also apply to the

settlement of administrative and judicial enforcement actions instituted prior to but not yet resolved as of the date the policy is issued.

As stressed in the ERPP, this document is only guidance and all penalties associated with TSCA enforcement actions must meet the statutory requirements of TSCA § 16, (15 U.S.C. § 2615).

The major revisions that have been made include:

1. The penalty numbers have been adjusted upward by 17.23% as required by the Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19 (2004).

2. The assumption that all target housing units contain children under six years of age unless the violator proves otherwise, has been changed to the assumption that all violations have at least a significant impact unless the violator can prove that all residents are at least eighteen years of age.

3. A section was added to allow reductions in penalty for reduced risk of exposure.

If you would like to discuss this matter further, please contact Rosemarie Kelley of the Waste and Chemical Enforcement Division at (202) 564-4014 or your staff can contact Laura Livingston (732-906-6998), Dean Ziegel (202-564-4038) or Tony Baney (202-564-4169).

Attachment

cc: Lead Enforcement Coordinators, Regions 1-10
Walker Smith, Office of Civil Enforcement
Gary Jonesi, Office of Civil Enforcement
Karen Dworkin, U.S. Department of Justice
Brenda Mallory, Office of General Counsel
Maria Doa, Office of Pollution Prevention and Toxics
Ella R. Barnes, Office of Criminal Enforcement, Forensics, and Training
James Edwards, Office of Compliance