

March 31, 1999

MEMORANDUM

SUBJECT: Issuance of Revised Enforcement Response Policy for TSCA §§ 8,12 & 13

FROM: Jesse Baskerville, Director  
Toxics and Pesticides Enforcement Division

To: Regional Division Directors for TSCA §§ 8, 12 & 13  
Regional Enforcement Directors for TSCA §§ 8, 12 & 13

Attached is EPA's Enforcement Response Policy (ERP) for the Toxic Substances Control Act Sections 8, 12 and 13 which becomes effective June 1, 1999. This revision of the ERP takes into account the Agency's "Audit Policy" (formally referred to as the policy on "Incentives for Self-Policing: Discovery, Correction and Prevention of Violations," 60 Fed. Reg. 66706 (December 22, 1995)) in determining the appropriate response to self-disclosures. Two of the principle changes made in this revision are the deletion of the Notice of Noncompliance for all first time violators of Sections 12(b) and 13 as well as the deletion of adjustments to the Circumstance Level from level 1 to level 4 for self-disclosure. Because the Audit Policy supercedes any other enforcement policy on matters relating to self-disclosure, all self-disclosed violations covered under the TSCA §§ 8, 12 & 13 ERP will first be reviewed to determine if they are eligible for mitigation of the gravity based penalty as set forth in the Audit Policy.

Among the modifications to this revised ERP are: new charts which incorporate the adjusted penalties published at 61 Fed. Reg. 69360, December 31, 1996, under the Federal Civil Penalties Inflation Adjustment Act of 1990; revised examples for calculating penalties which reflect the changes discussed above; and addition of a penalty calculation worksheet to assure that all the statutory factors are taken into account in determining the appropriate penalty.

This policy supercedes prior TSCA §§ 8, 12 and 13 policies and their amendments. Use this policy for TSCA §§ 8, 12 and 13 penalty calculations for violations discovered or disclosed after June 1, 1999.

Special thanks to Dan Kraft and his staff in Region 2 for taking the lead in working with the other Regions to update this ERP.

Attachment

cc: Office of Compliance  
TSCA Conference Call Addressees (via e-mail)