



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

AUG 19 2015

MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Lead-Based Paint Expedited Settlement Agreement Policy

FROM: Kenneth C. Schefski, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement

A handwritten signature in blue ink, appearing to read "K. Schefski", is written over the "FROM:" field.

TO: TSCA Division Directors, Regions 1-10
TSCA Enforcement Managers, Regions 1-10
Regional Counsels, Regions 1-10

This memorandum announces the Lead-Based Paint Expedited Settlement Agreement Policy (LBP ESA Policy, or Policy). In June 2012, the Office of Civil Enforcement (OCE) issued the LBP ESA Pilot (Pilot) to help Regions more efficiently resolve cases that involve certain minor violations of the Section 1018 Lead Disclosure Rule (LDR); TSCA Lead-Based Paint Activities Rule (Abatement Rule); Pre-renovation Education (PRE) Rule; and Renovation, Repair and Painting (RRP) Rule.¹ Based on the successful implementation of the Pilot and regional feedback, OECA has decided to transition from the Pilot to this Policy, effective immediately.

Attached to this memorandum is an explanation of the parameters and conditions for using the LBP ESA Policy (Attachment A, Program Elements). Generally, the elements of the LBP ESA Policy are comparable to those of the Pilot, as modified based upon informed input from the Regions and other affected offices. The Policy, however, expands the universe of ESA-eligible violations, and clarifies the eligibility of certain violations that were covered by the Pilot.

Also attached is a list of the LBP violations eligible for ESA treatment under this Policy (Attachment B). The list expands the number of ESA-eligible violations, and clarifies the proper use of ESAs for certain ESA-eligible violations. Also, this memorandum re-issues two model documents from the Pilot, updated with important technical changes: the LBP ESA Model Notice Letter (Attachment C), and the LBP ESA Model Expedited Settlement Agreement and Final Order (Attachments D). These models include important new penalty payment provisions, and must be used in lieu of the model documents from the Pilot. Also, for the reader's convenience, this package includes the chart from the Pilot which compares the LBP ESA Program and RRP Micro-Business Program (Attachment E).

OCE will continue to review the use and effectiveness of the Policy in the normal course of assessing the national LBP program, and on a case-by-case basis as appropriate. It is important that Regions continue to target for violations that are likely to impact human health and/or the environment, and maintain an appropriate balance between ESA and non-ESA enforcement actions.

¹ 40 C.F.R. Part 745 Subpart F (LDR); and 40 C.F.R. Part 745 Subparts L (Abatement Rule) and E (RRP/PRE Rules).

We appreciate the Regions' input in formulating this Policy. If you have questions regarding the LBP ESA Policy, please feel free to contact the Chief, Chemical Risk Reporting and Enforcement Branch, Waste and Chemical Enforcement Division.

Attachments

- A. Program Elements
- B. Eligible Violations
- C. Model Notice Letter
- D. Model Expedited Settlement Agreement and Final Order
- E. Interface of the LBP ESA Policy and RRP Micro-Business Matrix (Comparative Chart)

Lead-Based Paint (LBP) Expedited Settlement Agreement (ESA) Policy

Program Elements

I. Overview

This attachment details the criteria a case must meet for ESA eligibility and other aspects of the LBP ESA Policy.¹

II. Eligible Violations

Under the LBP ESA Policy, an ESA may be used only for a case that involves specifically-identified Medium or Low “Circumstance” and Minor “Extent” violations (herein, “minor violations”) from the Gravity-Based Penalty (GBP) matrices of OECA’s LBP enforcement response and penalty policies (ERPPs).² The Policy includes a § 1018 exception for High “Circumstance” and Minor “Extent” violations for non-compliance with the 1018 Lead Disclosure Rule (LDR). This exception only applies to sellers or lessors who fail to provide prospective purchasers or lessees with EPA’s lead hazard information pamphlet (a Level 1 violation). Table 1 shows the subset of violations to which the LBP ESA Policy applies in relation to the ERPP Circumstance and Extent categories.

Table 1. LBP ESA Policy (Applicability by Circumstance and Extent)

Circumstance	Extent		
	Major (child up to 6)	Significant (child age 6-18)	Minor (no child < 18)
High (Level 1-2)	§ 1018 Exception ^a		
Medium (Level 3-4)	(LBP ESA Policy is not Applicable)		
Low (Level 5-6)	LBP ESA Policy Applies ^b		

^a Other LDR violations remain ineligible for ESA treatment, such as failure to disclose known LBP, LBP hazards, or LBP records or reports.

^b The RRP Micro-business Matrix also may apply in certain cases. See Section VII.

¹ The LBP ESA Policy is consistent with Giles, C. (11/24/2014) *Revised Guidance on the Use of Expedited Settlement Agreements* (Memorandum)(herein after “2014 OECA ESA Guidance”), 18 pp., available at: <http://intranet.epa.gov/oeca/oce/io/documents/esa/revisedesaguidance.pdf> (accessed on April 22, 2015). This guidance supersedes the instructions in and certain aspects of Suarez, J.P. (12/2/2003) *Use of Expedited Settlement to Support Appropriate Tool Selection* (Memorandum)(hereinafter “2003 OECA ESA Guidance”), 26 pp., available at: <http://intranet.epa.gov/oeca/oce/io/documents/esa/esa-epeditedsettlementguidance120203.pdf> (accessed on April 22, 2015)..

² Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (Section 1018 ERPP) (Dec. 2007), 37 pp., available at: <http://www2.epa.gov/sites/production/files/documents/1018erpp-1207.pdf> (accessed on April 14, 2015). Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP), Interim Final Policy, (Aug. 2010), 44 pp., available at: <http://www2.epa.gov/sites/production/files/2014-01/documents/revisedconsolidated-erppenaltypolicy4513.pdf> (accessed on April 14, 2015).

The purpose of the §1018 exception is to provide Regions with an ESA-option for LDR pamphlet violation cases and to focus resources on RRP and other significant non-compliance with LBP requirements.

Attachment B lists the particular violations that are eligible for ESA treatment under the Policy. Note that certain Medium/Low Circumstance violations from the ERPPs are *not* included in Attachment B and, thus, are *not* eligible for ESA treatment, because they fall within an exclusion of the 2014 OECA ESA Guidance and/or this Policy. (In other words, the list of ESA-eligible violations in Attachment B is exhaustive, not illustrative; if a violation is not included in Attachment B, it is not ESA-eligible.)

Generally, an ESA may be used in cases that involve no more than 20 violations, and each of those violations must be ESA-eligible. However, the Region should consider whether ESA treatment is appropriate for this level of non-compliance. See Section V, Respondent Eligibility, concerning economic benefit.

III. Exclusions

In addition to the limitations above (Section II), an ESA may not be used under this Policy in cases with the following characteristics:

- The violator is a “repeat violator” within the meaning of the 2014 OECA ESA Guidance, which means that the violator has had the same or a “closely-related” violation within the past five years.³

For the LBP ESA Policy, “closely-related” means any LBP violation for which the violator has received any written determination from EPA, the U.S. Department of Justice, or a TSCA-authorized state that the respondent has violated a LBP requirement. Such a determination may be in the form of a federal (or state-equivalent) Notice of Determination (NOD), previous ESA settlement, Consent Agreement and Final Order (CAFO), or judgment. The prior violation may have involved any LBP-regulated property (target housing or child-occupied facility), project (renovation, abatement, *etc.*), or training program.

“Closely-related” violation does *not* include violations of other statutes. It also does *not* include violations of other TSCA Titles and programs (*e.g.*, PCBs, Asbestos, and New & Existing Chemicals), even though both the instant and prior violations govern similar conduct (*e.g.*, both are recordkeeping violations) and are enforced under the same TSCA provisions (*e.g.*, TSCA Sections 11 and 15).

³ 2014 OECA ESA Guidance *supra* note 1, at p. 7.

- The violator deliberately conceals evidence of non-compliance; fails or refuses to provide records or access needed to determine compliance; or is otherwise obstructive or uncooperative with the compliance monitoring processes or early settlement.⁴
- The violation results in significant harm to human health or the environment or may present an imminent and substantial endangerment to human health or the environment, without regard to where the violation falls on the ERPP matrix.⁵ Thus, for instance, a violation of the RRP Rule's work practice standards is not ESA-eligible even though the particular violation may be a Level 3 circumstance on the ERPP matrix.

IV. Respondent Eligibility

Any regulated entity could be ESA-eligible (*i.e.*, eligibility is based on the type and number of violations, not on the violator's size or presumed sophistication). Nonetheless, even if a case meets the foregoing criteria for ESA treatment, the Region may determine that an ESA is not the appropriate enforcement vehicle for a particular violator. For instance, the duration of noncompliance may have been significant, or the violator may have gained a significant economic benefit, such that formal enforcement is appropriate.⁶

V. Targeting

Regions should target for significant violations and risks; and use ESAs only when all of the violations that the Region can document are ESA-eligible violations. Regions, however, may target for ESA-eligible cases, *provided* that such ESA targeting and enforcement are part of a comprehensive program that encompasses an appropriate balance of ESA and non-ESA targeting and enforcement.

VI. Penalties

The Policy provides two different penalty amounts based upon the size of the violator's operation:

- A standard ESA penalty, applicable to most violators, for which each violation is \$1,000; or

⁴*Id.* at p. 4.

⁵ *Id.* at p. 6.

⁶*Id.* at p. 4.

- A further reduced penalty for “micro-businesses”,⁷ as defined below, for which each violation is \$200.⁸

The foregoing penalty levels are intended to result in a lower penalty amount than a Region ordinarily would derive using the ERPP penalty methodology, although this outcome will vary depending upon the particular violation cited in a case.⁹ For most violators, the total penalty in an ESA case should not exceed \$20,000. For micro-businesses, the total penalty in an ESA case should not exceed \$4,000.

“Micro-Business”

OCE’s RRP Micro-Business Matrix defines a “micro-business” as a business with annual sales or gross pre-tax revenue of \$300,000 or less.¹⁰ That definition also applies to the LBP ESA Policy. If the violator claims that it is a micro-business, then the Region should make an appropriate objective inquiry to confirm that claim.¹¹

Interface with the RRP Micro-Business Matrix

The LBP ESA Policy and RRP Micro-Business Matrix serve different purposes¹² and, thus, vary in important aspects.¹³ There, however, may be some cases in which both approaches apply, *i.e.*, RRP cases against *micro-businesses* that involve only *ESA-eligible violations*. Table 2 shows this potential overlap.

Table 2. Overlap Between ESA Policy vs. RRP Micro-Business Matrix

Circumstance	Extent		
	Major (child up to 6)	Significant (child age 6-18)	Minor (no child < 18)
High (Level 1-2)	RRP Micro-Business Matrix applies LBP ESA Policy applies and 		
Medium (Level 3-4)			

⁷ Kelley, R.A. (05/03/2012) *Pilot RRP Penalty Program for Micro-Businesses* (Memorandum)(hereinafter “RRP Micro-Business Matrix”), 4 pp., at p. 1.

⁸ This “flat” penalty applies a uniform Circumstance level.

⁹ See, *e.g.*, Section 1018 ERPP *supra* note 2, at p. 30 (The GBP for a Minor Extent Level 3 through 6 Lead Disclosure Rule violation is \$770 to \$130 for violations occurring on or after March 15, 2004). See also, LBP Consolidated ERPP *supra* note, at p. 41 (B-2) (The GBP for a Minor Extent Level 3 through 6 TSCA violation is \$4,500 to \$150 for violations occurring after January 12, 2009).

¹⁰ *Id.*

¹¹ Regions may use Dun & Bradstreet or a similar on-line database to preliminarily determine a company’s annual sales information. If such information is not publically available, then a violator must provide documentation (such as the previous year’s tax return) to show that its annual sales or gross revenue qualifies it for treatment as a micro-business.

¹² The RRP Micro-Business Matrix is limited to micro-business violators, but is available for all types of RRP violations, whereas the LBP ESA Policy applies to any size violator, but is available only for selected minor RRP *and* LDR violations. See Attachment E (comparative chart).

¹³ For example, the LBP ESA Policy provides an expedited (non-negotiated) approach to settlement, and uses a flat penalty rate; whereas the RRP Micro-Business Matrix affects only the GBP calculation in a case, and uses a specifically-designed penalty matrix. See Attachment E.

Low (Level 5-6)

RRP Micro-Business Matrix
applies

The penalty calculated under each approach could differ slightly depending upon the particular violations cited. That is, for a micro-business case that involves ESA-eligible violations, the penalty under the LBP ESA Policy would be the flat rate of \$200 per violation; whereas the penalty under the RRP Micro-Business Matrix could be more or less, depending on the penalty allowed for *each particular violation* as determined by the penalty matrix.¹⁴

OCE envisions that this overlap will apply to only a small number of cases. For these cases, Regions have the discretion, on a case-by-case basis, to select the appropriate approach: LBP ESA Policy, RRP Micro-Business Matrix, or standard ERPP matrix.

VII. Environmental Benefits

The 2003 OECA ESA Guidance required that ESAs obtain environmental benefits, as well as penalties.¹⁵ However, the 2014 OECA ESA Guidance removed the “penalty-only” prohibition on ESAs, recognizing that a key goal of ESAs is returning a source to compliance and that penalty-only ESAs may provide benefits.¹⁶

Also, for a respondent that has a duty to obtain, renew, or amend a certification or accreditation (to continue to conduct the regulated activity after the settlement), the ESA settlement document must compel the respondent to fulfill such duty as a condition of settlement.¹⁷

VIII. Formal Enforcement

Regions are expected to pursue formal enforcement if, within 90 days of respondent’s receipt of the ESA offer, the respondent declines or does not adequately respond to the offer.¹⁸ An adequate response includes returning the signed agreement, paying the penalty, and certifying that the violation has been corrected. This deadline is important so that, if respondents fail to meet the ESA deadlines, cases do not languish and the Region may proceed promptly to formal enforcement.

¹⁴ RRP Micro-Business Matrix *supra* note 7, at p. 3.

¹⁵ 2003 OECA ESA Guidance *supra* note 1, at p. 4 (“[The] Regions should not design an expedited settlement approach aimed solely at collecting penalties. Rather, through these expedited settlements, EPA should obtain both environmental benefits and collect penalties.”).

¹⁶ 2014 OECA ESA Guidance *supra* note 1, at p. 8 (“[A] penalty-only ESA could provide a deterrent effect to prevent repeat violations, address actual or potential environmental harm caused by the violation, or help maintain the integrity of the overall regulatory program.”).

¹⁷ Generally, Regions have required that an affected respondent show proof that it *has applied for* the necessary certification/accreditation when the respondent returns the signed ESA to the Region.

¹⁸ *Id.* at p. 6.

IX. Policy Use

Regions have the option to implement the LBP ESA Policy; implementation of this Policy is not mandatory. Regions may continue to use the LBP ERPP and the penalty formulation methods therein.

X. Model Documents

Regions may use the appended Model Notice Letter (Attachment C) and Model Expedited Settlement Agreement and Final Order (Attachment D) in implementing the LBP ESA Policy. Also, the Region may elect to use a "Return to Compliance Worksheet" (not included here) that would require the respondent to describe the actions taken to correct violations and provide documentation (*e.g.*, photographs, copies of appropriate documentation) to show that each violation has been corrected.

Eligible Violations

The following violations are eligible for expedited settlement under the Policy. Except as noted, **the violation descriptions and citations are copied from the applicable Enforcement Response and Penalty Policies.**¹

I. Lead Disclosure Rule (LDR) Violations

Components of Full Disclosure²

Level 1

Seller, Lessor, and Agent Requirement: Failure to provide purchaser or lessee EPA-approved lead hazard information pamphlet pursuant to 40 CFR § 745.107(a)(1).

Certification and Acknowledgment³

Level 4

Seller and Agent Requirement: Failure to include, as an attachment to a contract to purchase target housing, a statement by the purchaser affirming receipt of the information required by 40 CFR §§ 745.113(a)(2) and (a)(3) and the lead hazard pamphlet required under 15 USC § 2686 as specified in 40 CFR § 745.113(a)(4).

Level 4

Seller and Agent Requirement: Failure to include, as an attachment to a contract to purchase target housing, a statement by the purchaser that he/she has either had an opportunity to conduct risk assessment or inspection or has waived the opportunity to do so pursuant to 40 CFR § 745.113(a)(5).

Level 4

Lessor and Agent Requirement: Failure to include, as an attachment or within a contract to lease target housing, a statement by the lessee affirming receipt of the information required by 40 CFR §§ 745.113(b)(2) and (b)(3) and the lead hazard pamphlet required under 15 USC § 2686 as specified in 40 CFR § 745.113(b)(4).

Level 5

Agent Requirement: Failure to include, as an attachment to a contract to purchase target housing, a statement by one or more agents involved in the transaction to sell target

¹ Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (Section 1018 ERPP) (Dec. 2007), 37 pp., available at: <http://www2.epa.gov/sites/production/files/documents/1018erpp-1207.pdf> (accessed on April 14, 2015). Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP), Interim Final Policy, (Aug. 2010), 44 pp., available at: <http://www2.epa.gov/sites/production/files/2014-01/documents/revisedconsolidated-erppenaltypolicy4513.pdf> (accessed on April 14, 2015)

² Section 1018 ERPP *supra* note 1, at p. 27.

³ *Id.* at p. 28.

housing that the agent(s) has informed the seller of the seller's obligations and that the agent(s) is aware of his/her duty to ensure compliance with the Disclosure Rule pursuant to 40 CFR § 745.113(a)(6).

Level 5

Agent Requirement: Failure to include, as an attachment or within a contract to lease target housing, a statement by one or more agents involved in the transaction to lease target housing that the agent(s) has informed the lessor of the lessor's obligations and that the agent(s) is aware of his/her duty to ensure compliance with the Disclosure Rule pursuant to 40 CFR § 745.113(b)(5).

Failure to Retain Records/Signatures and Dates⁴

Level 6

Seller and Agent Requirement: Failure to include, as an attachment to a contract to purchase target housing, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements, as well as dates of said signatures, pursuant to 40 CFR § 745.113(a)(7).

Level 6

Lessor and Agent Requirement: Failure to include, as an attachment or within a contract to lease target housing, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements, as well as dates of said signatures, pursuant to 40 CFR § 745.113(b)(6).

Level 6

Seller, Lessor, and Agent Requirement: Failure to retain a copy of the completed disclosure records for no less than three years from the commencement date of the lease or the completion date of the sale pursuant to 40 CFR § 745.113(c)(1).

II. TSCA Violations: RRP Rule, PRE Rule, and Abatement Rule

Renovation Firm, Renovator and Dust Sampling Technician Certifications and Requirements⁵

Level 3a

1-All Renovations: Failure of a firm that performs, offers, or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under 40 C.F.R. § 745.89(a), pursuant to 40 CFR § 745.81(a)(2)(ii).⁶

⁴ *Id.* at p. 29.

⁵ LBP Consolidated ERPP *supra* note **Error! Bookmark not defined.**, at p. 32 (A-3).

⁶ *Id.* at Footnote 49 – which makes this offense a *Major* Extent violation for “larger firms” - is *not* applicable. Thus, “larger firms” are not excluded from ESA eligibility based on their size.

Level 5a

2-All Renovations: Failure of an EPA-certified firm to stop renovations or dust sampling if it does not obtain recertification under 40 CFR § 745.89(a), pursuant to 40 C.F.R. §745.89(b)(1)(iii).

Training Providers: Accreditation and Operation of Training Programs⁷

Level 3a

1-Target Housing and Child-occupied Facilities: Failure of a training program that performs, offers, or claims to provide EPA-accredited lead-based paint activities courses or renovator or dust sampling courses to apply for accreditation to EPA under 40 CFR §745.225(b) and receive accreditation from EPA under 40 CFR § 225(b)(2), pursuant to 40 CFR § 745.225(a)(3).

Level 3a

2-Target Housing and Child-occupied Facilities: Failure by a training program to employ a training manager who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225(c)(1).

Level 3a

4-Target Housing and Child-occupied Facilities: Failure of a training program's principal instructor and/or training manager to perform the assigned responsibilities, pursuant to 40 C.F.R. §745.225(c)(3).

Level 3a

7-Target Housing and Child-occupied Facilities: Failure of a training program to provide the training courses that meet the training hour requirements to ensure accreditation in the relevant disciplines, pursuant to 40 C.F.R. §745.225(c)(6).

Level 3a

15-Target Housing and Child-occupied Facilities: Failure by a training program to meet the minimum training curriculum requirements for each of the disciplines, pursuant to 40 C.F.R. §745.225(d).

Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities⁸

⁷ LBP Consolidated ERPP *supra* note **Error! Bookmark not defined.**, at pp. 32 (A-3) and 33 (A-4). For purposes of applying the Policy, any ESA-eligible training violation may be considered a Minor Extent violation without regard to the number of students attending the class where the violation occurred. In other words, the Region may disregard the class size factor in Appendix B of the LBP Consolidated ERPP (Gravity-Based Penalty Matrix for Training Violations) ordinarily used to determine whether a violation is a Major, Significant, or Minor Extent offense.

⁸ *Id.* at p. 38 (A-9).

Level 3a

31-Target Housing and Child-occupied Facilities: Failure of a firm to notify EPA of lead-based paint abatement activities or to update notification as prescribed and by the designated deadline, pursuant to 40 C.F.R. §745.227(e)(4)(i-v).⁹

Level 3a

32-Target Housing and Child-occupied Facilities: Failure of a firm to include the designated information in each notification, pursuant to 40 C.F.R. §745.227(e)(4)(vi).¹⁰

Renovation Firm, Renovator and Dust Sampling Technician Certifications and Requirements¹¹**Level 4a**

7-All Renovations: Failure of a renovator or dust sampling technician performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to maintain copies of their course completion certificate(s) (proof of certification) at the work site pursuant to 40 CFR § 745.90(b)(7).

Training Providers: Accreditation and Operation of Training Programs¹²**Level 4a**

8-Target Housing and Child-occupied Facilities: Failure of a training program to conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline to evaluate successful completion of the course, pursuant to 40 C.F.R. §745.225(c)(7).

Acknowledgment and Certification Statement Requirements¹³**Level 4b**

1-Renovation in Dwelling Unit: Failure to obtain from the owner, a written acknowledgment that the owner has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1)(i), or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(1).

Level 4b

2-Renovation in Dwelling Unit: Failure to obtain from the adult occupant, a written acknowledgment that the adult occupant has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(2)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(2).

⁹ *Id.* (Note that Appendix A refers to “failure of a *renovation* firm.” Renovation firms, however, are not required to provide advance notification to EPA of upcoming work.)

¹⁰ *Id.*

¹¹ *Id.* at p. 32 (A-3).

¹² *Id.* at p. 33 (A-4).

¹³ *Id.* at p. 31 (A-2).

Level 4b

3-Renovation in Common Area: Failure to obtain from the owner, a written acknowledgment that the owner has received the pamphlet, or that information signs have been posted, pursuant to 40 C.F.R. § 745.84(b)(1)(i), or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(b)(1).

Level 4b

4-Renovation in Common Area: Failure to prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet, pursuant to 40 C.F.R. §745.84(b)(3).

Level 4b

6-Renovation in Child-Occupied Facility: Failure to obtain from the owner of the building, a written acknowledgment that the owner has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. §745.84(c)(1)(i).

Level 4b

7-Renovation in Child-Occupied Facility: Failure to obtain from an adult representative of the child-occupied facility, if the operator of the child-occupied facility is not the owner of the building, a written acknowledgment that the operator has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(c)(1)(ii).

Level 4b

8-Renovation in Child-Occupied Facility: Failure to prepare, sign and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet, pursuant to 40 C.F.R. §745.84(c)(3).

Renovation Firm, Renovator and Dust Sampling Technician Certifications and Requirements¹⁴

Level 5a

3-All Renovations: Failure of an EPA-certified firm to amend its certification within 90 days of the date a change occurs to information included in the firm's most recent applications, pursuant to 40 C.F.R. §745.89(b).¹⁵

Training Providers: Accreditation and Operation of Training Programs¹⁶

¹⁴ *Id.* at p. 32 (A-3).

¹⁵ *Id.* (Note: The accompanying violation "Failure of a firm to halt renovations or dust sampling until its certification is amended, pursuant to 40 C.F.R. §745.89(c)" is not eligible for ESA treatment.)

¹⁶ *Id.* at p. 33 (A-4).

Level 5a

6-Target Housing and Child-occupied Facilities: Failure of a training program to ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities, including the provision of training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed, pursuant to 40 C.F.R. §745.225(c)(5).

Level 5a

10-Target Housing and Child-occupied Facilities: Failure of a training program to develop and implement a quality control plan that contains at least the minimum elements, pursuant to 40 C.F.R. §745.225(c)(9).

Level 5a

14-Target Housing and Child-occupied Facilities: Failure of a training manager to provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses, pursuant to 40 C.F.R. §745.225(c)(14).

Acknowledgment and Certification Statement Requirements¹⁷

Level 5b

5-Renovation in Common Area: Failure to notify, in writing, the owners and occupants if the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, before the renovator initiates work beyond that which was described in the original notice, pursuant to 40 C.F.R. § 745.84(b)(4).

Level 5b

9-All Renovations: Failure to include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of the renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature, pursuant to 40 C.F.R. § 745.84(d)(1).

Level 5b

10-All Renovations: Failure to provide the written acknowledgment of receipt on either a separate sheet or as part of any written contract or service agreement for the renovation, and be written in the same language as the text of the contract or agreement or lease or pamphlet, pursuant to 40 C.F.R. § 745.84(d)(2) and (3).

Record Retention Requirements¹⁸

Level 6a

¹⁷ *Id.* at p. 31 (A-2).

¹⁸ *Id.* at p. 32 (A-3).

1-All Renovations: Failure to retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities, pursuant to 40 C.F.R. § 745.86.

Training Providers: Accreditation and Operation of Training Programs¹⁹

Level 6a

5-Target Housing and Child-occupied Facilities: Failure of a training program to retain²⁰ the EPA-recognized documents as evidence that the training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience, pursuant to 40 C.F.R. §745.225(c)(4).

Level 6a

9-Target Housing and Child-occupied Facilities: Failure of a training program to issue unique course completion certificates containing the required information to each individual who passes the training course, pursuant to 40 C.F.R. §745.225(c)(8).

Level 6a

12-Target Housing and Child-occupied Facilities: Failure of a training manager to provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered, pursuant to 40 C.F.R. §745.225(c)(13).²¹

Level 6a

13-Target Housing and Child-occupied Facilities: Failure by training manager to provide EPA with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course, pursuant to 40 C.F.R. §745.225(c)(13)(i).²²

Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities²³

Level 3a

9-Target Housing and Child-occupied Facilities: Failure of an inspector or risk assessor to prepare an inspection report that includes the required information, pursuant to 40 C.F.R. §745.227(b)(4).

¹⁹ *Id.* at p. 33 (A-4).

²⁰ *Id.* (Note, the LBP Consolidated ERPP says “submit or retain”. There is, however, no submission requirement, except with the accreditation application.

²¹ *Id.* (Note, the redundant use of “or renovator, dust sampling technician” between “of renovator, dust sampling technician,” and “or lead-based paint activities offered” in the LBP Consolidated ERPP was deleted in this attachment. Note also, the LBP Consolidated ERPP states “lead-based paint activities offered”. This was changed to “lead-based paint activities courses offered” in this attachment for consistency with the language in 40 C.F.R. §745.225(c)(13).

²² *Id.* (Note, the LBP Consolidated ERPP only states “lead-based paint activities”. Renovators and dust sampling technicians were included in this attachment for consistency with the language in 40 C.F.R. §745.225(c)(13)(i).

²³ *Id.* at pp. 36 (A-7), 37 (A-8), and 39 (A-10).

Level 3a

16-Target Housing and Child-occupied Facilities: Failure of a risk assessor to prepare a lead hazard screen report that includes the required information, pursuant to 40 C.F.R. §745.227(c)(5).

Level 3a

27-Target Housing and Child-occupied Facilities: Failure of risk assessor to prepare a risk assessment report that includes the required information, pursuant to 40 C.F.R. §745.227(d)(11).

Level 4a

55-Target Housing and Child-occupied Facilities: Failure by a supervisor or project designer to prepare an abatement report that includes the required information, pursuant to 40 C.F.R. §745.227(e)(10).

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Company Contact Address]

Re: Notice of Investigation Results – Federal Lead-based Paint Requirements;
Opportunity for Expedited Settlement within Thirty (30) Days

Dear [Contact Person]:

The U.S. Environmental Protection Agency (“EPA”), Region __ [Number] has conducted a review of information available concerning your operation, _____ [Firm/Company Name or the regulated activity, if individual]. EPA’s review indicates that your _____ [as applicable: “operation” or “activity”] has failed to comply with the following requirement(s) concerning lead-based paint under _____ [as applicable: “the U.S. Toxic Substances Control Act, 42 U.S.C. § 2601 et seq. (TSCA)” or “Section 1018 of the Residential Lead-based Paint Hazard Reduction Act, 42 U.S.C. § 4852d (§ 1018 Lead Disclosure Rule)”]:

[Requirement(s) violated by Respondent]

We encourage you to immediately review your compliance with the foregoing requirement(s). If you determine that you are not subject to or have not violated the foregoing requirement(s), then please provide a written explanation, along with any relevant documentation to _____ [EPA Contact] at the EPA address shown below within thirty (30) days of your receipt of this letter. (All days in this communication are computed as calendar days.)

If, however, you are out of compliance, EPA is committed to the fair and rapid settlement of this matter. Section 16 of TSCA authorizes EPA to pursue civil penalties of up to \$ _____ per day for each violation of [as applicable: “TSCA” or “the § 1018 Lead Disclosure Rule”]. However, EPA Region ____ [Number] is hereby offering to quickly resolve the alleged violation(s) through an expedited settlement process.

To take advantage of the expedited settlement process, you must comply with each of the following conditions within thirty (30) days of your receipt of this letter:

- (1) Correct the violation(s). [spell out the required action(s), if appropriate]
-

-
- (2)¹ Complete and return to EPA the enclosed Expedited Settlement Agreement and Final Order (“Agreement” or “ESA/FO”) as directed below. Please note that in signing the Agreement, you are certifying under penalty of law that you: (a) have corrected the violation(s); (b) *have submitted true and accurate documentation of compliance*²; (c) have provided a deposit to pay the assessed penalty (below); and (d) release your deposit to EPA upon entry of the Agreement. Failure to meet these conditions means you may be liable for the original violations, as well as liable for making a false representation to the U.S. Government.³ Also, by signing the Agreement, you agree to waive your opportunity for a hearing or appeal concerning these violation(s).
- (3) Provide a deposit for payment of the assessed penalty of \$ [Amount](_____ dollars and 00 cents [write out amount]) in accordance with the following directions. (The deposit amount and assessed penalty amount are identical.)

A. Submit the deposit via one of the following alternative methods:

- Dispatch a cashier’s or certified check or money order with a notation for **[insert docket number]** payable to the order of the “Treasury of the United States of America” to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. **[insert docket number]**
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
- Dispatch a cashier’s or certified check or money order by an overnight/common carrier (e.g., FedEx[®] or United Parcel Service of America, Inc.) with a notation for **[insert docket number]** payable to the order of the “Treasury of the United States of America” to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

¹ **[NOTE TO REGIONS:** Paragraphs (2) and (3) and references throughout regarding payment of a penalty “deposit” are not subject to modification, since these provisions adopt OGC-approved requirements.]

² **[NOTE TO REGIONS:** Include this clause if the Region directed Respondent to submit any complying documentation under Paragraph (1) of this letter.]

³ Under 18 U.S.C. § 1001, it is a federal crime to make materially false, fictitious, or fraudulent statements or representations to the U.S. Government.

-
- Make electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).
- B. To ensure proper credit, include all of the following information with your deposit:⁴
- The docket number shown on the enclosed Agreement. (For cashier's or certified checks, money orders, and other non-electronic deposits, write the docket number on the deposit instrument.);
 - Respondent name and address (as it appears on the Agreement documents);
 - Respondent contact person's name and telephone number(s);
 - EPA contact person's name and telephone number (listed below); and
 - Reason for the deposit.

You should send your signed Agreement (along with proof of payment of the penalty deposit) by certified U.S. mail, return receipt requested, to:

[EPA Contact and Address]

Proof of payment of the penalty deposit should be a copy of the cashier's or certified check/money order, or a statement of affirmation or receipt of an electronic funds transfer. *Also, include documentation demonstrating that you are now in compliance with the requirement(s) that were alleged to be violated.*⁵

If you can demonstrate in writing that it is technically infeasible or impracticable to correct your violation(s) within thirty (30) days, upon request, EPA, at its discretion, may grant an extension of up to thirty (30) days. You must request that extension and demonstration of infeasibility or impracticability in writing to EPA no later than ten (10) days before the end of the initial thirty (30) day compliance period. The request must clearly indicate whether you intend to take advantage of this expedited settlement offer and contain a schedule for when you will come into compliance (which must not extend beyond the extension period). Any extensions must be granted in writing by EPA.

If you do not follow the procedures outlined in this letter for expedited settlement (e.g.,

⁴ Payment via EFT includes the ability to provide this information. For non-EFT payments, this information can be provided on a note accompanying the payment instrument (check, money order, etc.); however, the docket number should always be placed on the payment instrument.

⁵ [NOTE TO REGIONS: Include this sentence if the Region directed Respondent to submit complying documentation under Paragraph 1 of this letter.]

Lead-Based Paint (LBP) Expedited Settlement Agreement (ESA) Policy
Final Guidance

Attachment C. Model Notice Letter

correct the violation(s), pay the assessed penalty deposit, and sign and return the Expedited Settlement Agreement) within thirty (30) days of your receipt of this letter, then this settlement offer will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violation(s) and to seek up to the maximum penalty per day for each violation.

If you have any questions or wish to discuss the general circumstances of your case, then please contact the Compliance Officer assigned to your case, _____ [Name] at _____ [Telephone Number and/or E-mail Address].

**Lead-Based Paint (LBP) Expedited Settlement Agreement (ESA) Policy
Final Guidance**

Attachment C. Model Notice Letter

Sincerely,

[EPA Manager's Name and Signature Block]

cc: **[Persons to CC]**

Enclosure:
Expedited Settlement Agreement and Final Order

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION [Number]

IN THE MATTER OF:) Docket No. _____
) [Number]
)
«facility»)
Respondent.) **EXPEDITED SETTLEMENT**
) **AGREEMENT AND**
) **FINAL ORDER**
)
_____)

EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER¹

1. The U.S. Environmental Protection Agency (“EPA”) alleges that _____ [as applicable: **Firm/Company Name, or Individual’s Name**] (“Respondent”) failed to comply with _____ [as applicable: “Section __ of the U.S. Toxic Substances Control Act, 42 U.S.C. § 2601 et seq. (TSCA)” or “Section 1018 of the Residential Lead-based Paint Hazard Reduction Act (§ 1018 Disclosure Rule)”].
2. Under [as applicable: “Section __ of TSCA” or “the § 1018 Disclosure Rule”], Respondent was required to _____

[Allege how Respondent was subject to the requirement, and how Respondent failed to meet the requirement]

3. EPA and Respondent agree that settlement of this matter for a civil penalty of \$ _____ (_____ dollars and 00 cents [write out amount]) is in the public interest.
4. Not more than thirty (30) calendar days after the effective date of the Final Order, respondent shall deposit the civil penalty amount listed in paragraph 3 by one of the following methods:
 - A. Dispatch a cashier’s or certified check or money order with a notation for [insert docket number] payable to the order of the “Treasury of the United States of America” to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. [insert docket number]

¹ [REMINDER TO REGIONS: A certificate of service is required under 40 C.F.R. § 22.5(a)(3); and the ESA/FO must be served as provided in 40 C.F.R. Part 22.]

Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- B. Dispatch a cashier's or certified check or money order by an overnight/common carrier (e.g., FedEx® or United Parcel Service of America, Inc.) with a notation for **[insert docket number]** payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

- C. Make electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

5. Concurrently with paragraph 4, Respondent shall forward a copy of the cashier's or certified check or money order or documentation of a wire transfer to the following address with a certification that regarding the violations alleged herein, Respondent is in compliance with [as applicable: "TSCA" or "the §1018 Lead Disclosure Rule"].
6. EPA is authorized to enter into this Expedited Settlement Agreement ("Agreement"), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 16 of TSCA and 40 C.F.R. § 22.13(b).

[EPA contact and address]

By written notice to Respondent, EPA may change the address and/or person listed above.

7. If Respondent fails to make the payment in a timely manner as required by Paragraph 4, then Respondent shall pay a stipulated penalty of \$ _____ (_____ dollars and 00 cents **[write out amount]**) per calendar day for every day the civil penalty payment is late, unless EPA in writing excuses or mitigates the stipulated penalty. EPA may excuse or mitigate the stipulated penalty if EPA determines that the failure to comply occurred despite Respondent's exercise of good faith and due diligence.
8. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirement(s) in Paragraph 2 (above); (b) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto.

9. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) has corrected the alleged violation(s), *and has submitted true and accurate documentation of such correction along with this Agreement*²; (b) agrees to provide a deposit for payment of the civil penalty set forth in Paragraph 4 ; (c) agrees to submit a true and accurate proof of deposit for payment of said civil penalty as set forth in Paragraph 5; and (d) agrees to release said deposit for payment to EPA upon entry of the Final Order attached hereto.
10. Upon the effective date of this Agreement and subsequent payment of the civil penalty as set forth in paragraph 4, Respondent shall be resolved of liability for Federal civil penalties for the violations and facts only alleged herein.
[As applicable: specify any additional performance obligations.]
11. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
12. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of [*as applicable: “TSCA” or “the §1018 Lead Disclosure Rule”*], any other federal statute or regulation, or this Agreement.
13. Upon signing and returning this Agreement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to TSCA.
14. The penalty, including any stipulated penalties, specified above represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local income taxes.
15. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount due, plus stipulated penalties and interest at the statutory judgment rate provided in 28 U.S.C. § 1961.
16. Each party shall bear its own costs and fees, if any.
17. The Agreement authorized by EPA’s execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.
18. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. 22.31(b), is effective upon filing.

² [NOTE to REGIONS: Include the second clause only if the Region directed Respondent to submit complying documentation.]

**Lead-Based Paint (LBP) Expedited Settlement Agreement (ESA) Policy
Attachment D. Model Expedited Settlement Agreement and Final Order**

IT IS SO AGREED,

Name (print): _____

Title (print): _____

Signature: _____

Date _____

APPROVED BY EPA:

[EPA Manager's Name]³

Date _____

Title]

³ [REMINDER to REGIONS: The signing manager should be the official position stated in the Regional Delegation of Authority for TSCA.]

FINAL ORDER

Pursuant to the authority of Section 16 of Toxic Substances Control Act, 15 U.S.C. § 2615, and according to the terms of this Agreement, IT IS HEREBY ORDERED THAT:

1. [Firm/Company Name, or Individual's Name] ("Respondent") shall comply with all terms of the Expedited Settlement Agreement;
2. Respondent is assessed a civil penalty of \$ _____ (_____ dollars and 00 cents [**write out amount**]); and
3. Respondent shall, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, make payment *via* a certified or cashier's check or money order or through a wire transfer as described in the Expedited Settlement Agreement.

This Agreement shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region XX. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

IT IS SO ORDERED:

[Name]
[Regional Judicial Officer]

Date _____

Interface of the LBP ESA Policy and RRP Micro-Business Matrix

OCE has issued both the *LBP ESA Policy* and the *FY12 RRP Penalty Program for Micro-Businesses* (herein, RRP Micro-Business Policy). The two approaches serve different functions, and vary in scope and operation, but may overlap with respect to a small set of cases (*i.e.*, RRP cases against micro-businesses that involve only ESA-eligible violations). The chart below is provided solely as a convenient reference for EPA personnel, and does not affect any aspect of either approach.¹

LBP ESA Policy vs. RRP Micro-Business Matrix		
Coverage / Applicability	LBP ESA Policy	RRP Micro-Business Matrix
Effect on Enforcement Process	Provides expedited (non-negotiated) settlement process	Affects only Gravity-Based Penalty (GBP) calculation
Rule(s) Covered	RRP, Abatement, §1018 LDR	RRP
Violators		
Eligible Violators	Any size violator	Micro-businesses only
“Micro-business” Definition	“business with annual sales or gross revenue of \$300,000 or less”	
Violations		
Extent <ul style="list-style-type: none"> • Major (child up to 6) • Significant (child age 6-18) • Minor (<i>no</i> child < 18) 	Minor violation <i>listed</i> in Policy	All Minor, Significant, and Major violations
Circumstance <ul style="list-style-type: none"> • High (<i>e.g.</i>, work practices) • Medium (<i>e.g.</i>, recordkping, certification) • Low (<i>e.g.</i>, record retention, re-certif'n) 	<ul style="list-style-type: none"> • Medium (a few) • Low (no work practice violations) 	<ul style="list-style-type: none"> • High • Medium • Low (including work practice violations)
Exclusions	<ul style="list-style-type: none"> • Violation is not listed in Policy, results in significant harm, or may present an ISE • Violator is “repeat violator,” obstructive, or uncooperative 	
Penalty Calculations		
Maximum Violations Per Case	Generally up to 15 (may be up to 20)	Unlimited
Penalty Amount per Violation	\$1,000 each for most violators \$200 each for micro-businesses	See GBP Matrix
Maximum Penalty per Case	<ul style="list-style-type: none"> • \$15,000 for most violators • \$3,000 for micro-businesses (Greater if more than 15 violations) 	Based on GBP Matrix, as adjusted using ERPP adjustment factors
Other Matters		
Effect on Formal Enforcement	Formal enforcement if respondent does not accept ESA offer in 30 days	Matrix affects only the GBP calculation
Review / Assessment	Yes	Yes

¹ See Attachment A for details regarding the LBP ESA Policy. See separate documents regarding the RRP Micro-Business Matrix.