



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

DEC 14 2012

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Exception to the Minimum Penalty Requirements for Proposed Supplemental Environmental Projects in Administrative Matters Resolving Violations of TSCA Sections 402, 404 and 406(b)

FROM: Cynthia Giles
Assistant Administrator *Cynthia Giles*

TO: Regional Counsel
Regional Enforcement Managers
Regional Lead Program Managers

The purpose of this memorandum is to provide an exception to the minimum penalty requirement of the Supplemental Environmental Projects (SEP) Policy in administrative settlements resolving violations of Sections 402, 404 and 406(b) of the Toxic Substances Control Act (TSCA) and the regulations found at 40 C.F.R. Part 745. Section E of the SEP Policy requires the assessment of a minimum penalty of 25% of the gravity component, or 10% of the gravity component plus economic benefit, whichever is greater, in settlements that include a SEP.

For TSCA Sections 402, 404 and 406(b) administrative settlements that include SEPs requiring lead-based paint abatement or blood lead level screening and/or treatment for children where Medicaid coverage is not available, the minimum penalty requirement is hereby reduced to 10% of the gravity-based penalty, or 10% of the gravity plus economic benefit¹, whichever is greater. A similar exception was previously approved for administrative settlements resolving violations of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the Real Estate and Lead Disclosure Rule.²

OECA believes it is appropriate to allow this exception to encourage SEPs that address the potentially significant health impacts of exposure to lead that may result from violations of TSCA Sections 402, 404 and 406(b). Of particular concern are the potential lead exposure risks

¹ Violations of TSCA Section 406(b) do not have an economic benefit component. Violations of TSCA Section 402 may have an economic benefit component. However, where the economic benefit component is not a significant part of the penalty, it may be waived. See "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" (Aug. 2010).

² See Memorandum entitled, "Supplemental Environmental Projects in Administrative Enforcement Matters Involving Section 1018 Lead-Based Paint Cases." (Nov. 23, 2004)

that can occur during renovations of housing containing lead-based paint unless certain safety measures are taken.

- The regulations associated with TSCA Sections 402 and 404 implement the Training and Certification Program for the Lead-Based Paint Activities Rule and the Renovation, Repair and Painting Rule. These rules require that firms be certified, individuals conducting lead-based paint abatements, risk assessments, inspections, dust sampling activities, or renovations are properly trained and certified, that training programs are accredited, and that these activities are conducted according to reliable, effective and safe work practice standards.
- The regulations associated with TSCA Section 406(b) implement the Pre-Renovation Education Rule and require that owners and occupants of most pre-1978 housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing.

Children are particularly susceptible to lead poisoning. Low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of six. At low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children.

In 1997, the President's Task Force on Environmental Health Risks and Safety Risks to Children set a goal of ending childhood lead poisoning by 2010. That date has passed, but children continue to be poisoned in their homes. As part of any settlement resolving violations of 40 C.F.R. Part 745, we would like to encourage projects that further the goal of making properties lead-safe for children. By allowing a reduced minimum penalty requirement for SEPs, we provide greater opportunities for projects that will prevent childhood lead poisoning.

Reducing the minimum penalty requirement will provide a financial incentive for a respondent to perform or arrange to have others perform an abatement or blood-lead level testing SEP, while maintaining the deterrent value of the penalty. We are optimistic that this change will result in additional abatement or blood level testing SEPs and therefore result in fewer incidences of childhood lead poisoning and/or earlier treatment where necessary.

This exemption is permissive, and not mandatory. Regions should make a determination on a case-by-case basis as to whether the exception is appropriate.

Questions about TSCA Sections 402, 404 and 406(b) administrative enforcement settlements should be directed to Greg Sullivan, Chief, Chemical Risk and Reporting Enforcement Branch, Waste and Chemical Enforcement Division at (202) 564-1298. Questions about the SEP Policy, or this memorandum in particular, may be addressed to Bernadette Rappold, Director, Special

Litigation and Projects Division at (202) 564-4387, or to Beth Cavalier or Jeanne Duross of her staff. Beth can be reached at (202) 564-3271 and Jeanne can be reached at (202) 564-6595.

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