

March 8, 2000

MEMORANDUM

Subject: Interim Guidance for Enforcing the TSCA §402 Abatement Rule
“Firm and Lead Abatement Professional Certification Requirements”

From: Jesse Baskerville, Director /s/
Toxics and Pesticides Enforcement Division
Office of Regulatory Enforcement

To: Addressees

This memorandum provides interim guidance for the enforcement of TSCA §402 Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 40 CFR 745 subpart L (“TSCA 402 Abatement Rule”). The TSCA 402 Abatement Rule requires EPA accreditation of training programs that train lead abatement professionals (“LAPs”) for EPA certification. EPA began enforcement of the TSCA 402 Abatement Rule on March 1, 1999, which was the date by which all training programs had to be accredited by EPA in order to train LAPs for EPA certification. On March 1, 2000, all firms and LAPs conducting lead-based paint (“LBP”) activities had to be EPA certified. Enforcement of the Firm and LAP certification requirement has now begun. Currently, there are only a small number of certified firms and LAPs. A number of firms and LAPs are applying for certification, but the application processing time can be as long as 90 days. This memo provides guidance for enforcement actions against uncertified firms that are performing LBP activities and firms that hire uncertified LAPs to conduct LBP activities will remain in effect until the TSCA 402 Abatement Rule Interim Final Enforcement Response Policy (“ERP”) is issued.

The TSCA 402 Abatement Rule requires all firms and LAPs conducting LBP activities in target housing or child-occupied facilities to be certified by March 1, 2000. Also after March 1, 2000, anyone conducting LBP activities must also follow the work practice standards set forth in the TSCA 402 Abatement Rule at 40 C.F.R 745.227. To be eligible for EPA certification, the individual must have taken an EPA-accredited training program or be certified by an EPA-authorized State or Tribe. A firm seeking certification must submit to EPA a letter attesting that the firm will only employ appropriately certified employees to conduct LBP activities, and that

the firm and its employees will follow the work practice standards set forth at 40 C.F.R. 745.227.

An uncertified firm conducting lead-based paint activities after March 1, 2000, should be issued a civil administrative complaint with a proposed civil penalty amount of \$5,000. A firm, whether certified or uncertified, may also be issued a civil administrative penalty for employing uncertified LAPs to conduct LBP activities. In such cases a complaint may be issued with a proposed civil penalty amount of \$1,000 per uncertified LAP the firm employs. In such cases where there is an uncertified firm employing uncertified LAPs the penalties will be added. In this case the firm should be issued a proposed penalty of \$5,000 for being uncertified in addition to a proposed penalty of \$1,000 per uncertified LAP.

The reduced penalty amounts illustrated in this memo will only be applicable for violations committed after March 1, 2000, but before the issuance of the ERP. Violations committed after the ERP is issued will be subject to the full range of penalties as provided by TSCA and detailed in the ERP.

The first six cases developed by each region under this guidance will be considered a Nationally Significant Issue (NSI) and must be sent to the Toxics and Pesticides Enforcement Division (“TPED”) for review and concurrence. TPED will review and concur on any case within 20 days of its receipt. Attached is a sample “request for concurrence document” to assist the regions in obtaining concurrence from TPED.

The TPED contacts for the TSCA 402 Abatement Rule are Shana Arnold (202) 564-4039 and Samuel Wiggins (202) 564-4163.

Attachment

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