



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

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ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Supplemental Environmental Projects In Administrative Enforcement Matters
Involving Section 1018 Lead-Based Paint Cases

FROM: Thomas V. Skinner *TVS*
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Regional Counsel
Regional Enforcement Managers
Regional Lead Program Managers
SEP Coordinators

The purpose of this memorandum is to provide an exception to the minimum penalty requirements of the Supplemental Environmental Projects (SEP) Policy for certain public health SEPs performed pursuant to administrative enforcement settlements under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and the regulations promulgated under Section 1018 (known as the Real Estate Notification and Disclosure Rule) apply to most housing built before 1978. The regulations require that:

Sellers and landlords must disclose known lead-based paint and lead-based paint hazards and provide available reports to buyers and renters;

Sellers and landlords must give buyers and renters the pamphlet titled "Protect Your Family from Lead in Your Home";

Home buyers receive a 10-day period to conduct a lead-based paint inspection;

Sales contracts and leasing agreements must include certain notification and disclosure language; and

Sellers, lessors, and real estate agents share responsibility for ensuring compliance.



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Through this memorandum, I am allowing an exception to the minimum penalty requirements of the SEP Policy¹ for Section 1018 administrative settlements only², where such settlements include certain public health SEPs. Specifically, for Section 1018 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 reduced from 25% of the gravity-based penalty to 10% of the gravity-based penalty.³ All other conditions of the SEP Policy, including those regarding mitigation credit, must be adhered to.⁴

This exception is being made to address concerns about the potentially significant health impacts, especially to children, that may result from violations of Section 1018. Regional enforcement staff have been working hard to negotiate administrative settlements for Section 1018 violations which include abatement SEPs, but have experienced some difficulties as respondents in these cases are often small businesses or individuals who may not have sufficient resources or the incentive to both perform significant abatement and pay a penalty equal to 25% of gravity. Reducing the minimum penalty will provide a financial incentive for a respondent to perform an abatement or blood-lead level testing SEP while at the same time maintaining the deterrent value of the penalty. OECA is optimistic that the changes outlined above will result in an increased number of SEPs in administrative settlements for Section 1018 violations, and

¹The SEP Policy requires a minimum penalty of 25% of the gravity-based penalty or 10% of the gravity-based penalty plus economic benefit, whichever is greater.

²Since the Residential Lead-Based Paint Hazard Reduction Act does not authorize EPA to seek injunctive relief in administrative enforcement actions, lead abatement work conducted pursuant to an administrative settlement may properly be considered a SEP provided the Region determines, based upon readily available information, that it is unlikely the government could obtain lead-based paint abatement projects as injunctive relief in federal court under the facts of the particular case. When the facts of a case, however, indicate that injunctive relief may be appropriate, the Region should consult with the Department of Justice (DOJ) and, if appropriate, refer the case to DOJ. This memorandum provides guidelines intended to assist the Regions, and does not prohibit the Regions from referring cases for penalties or injunctive relief to DOJ.

³There is generally no economic benefit to the violator from such violations.

⁴Lead-based paint abatement SEPs must be conducted in compliance with EPA regulations set forth at 40 C.F.R. § 745.227, including, but not limited to, the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June, 1995, as revised in 1997), and executed by individuals certified to perform such work in accordance with the applicable EPA regulations, or where authorized, State law requirements. Following completion of the abatement work, the respondent must have lead clearance testing performed by a certified risk assessor. The abatement work and lead clearance sampling may not be performed by the same individual or entity. Where the Consent Agreement and Final Order (CAFO) calls for lead-based paint inspections or risk-assessments prior to abatement, clearance may be performed by the same individual or entity that conducted the lead-based paint inspections or risk-assessments so long as the individual or entity is certified.

therefore result in fewer incidences of childhood lead poisoning. The exception is permissive not mandatory, and the Regions should make a determination on a case-by-case basis as to whether the exception is appropriate.

OECA believes that it is appropriate to allow this exception for Section 1018 administrative settlements due to the unique combination of factors associated with the communities put at risk by Section 1018 violations and the nature of the violators.

- o Lead-based paint presents a significant hazard to children's health. Abatement is the most direct means to eliminating this hazard.
- o In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851, Congress found, among other things, that (1) low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; (2) at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and (3) the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Congress further found that most of the poisoned children were from low economic backgrounds and were disproportionately minorities.
- o Many of the children exposed to the hazards of lead-based paint are living in older housing in economically disadvantaged communities, presenting environmental justice concerns. Executive Order 12898 directs each federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations.
- o The President's Task Force on Environmental Health Risks and Safety Risks to Children has set a goal of ending childhood lead poisoning by 2010. A major theme voiced recently by the Center for Disease Control (CDC), U.S. Department of Housing and Urban Development (HUD), and EPA at the June, 2004 National Lead and Healthy Homes Grantee Conference in Orlando, Florida was that we can and must focus on the "bad properties" where children are being poisoned and use Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d, and the regulations promulgated under Section 1018 (known as the Real Estate Notification and Disclosure Rule), to end the cycle of poisoning children.
- o OECA's FY 2005-2007 NPM guidance explicitly commits the national lead-based paint enforcement program to the 2010 goal. Lead-based paint abatement is the most direct means of achieving this goal.
- o Respondents in Section 1018 cases are typically small businesses and individual owners. In many cases, these respondents do not have the resources to undertake significant abatement work while at the same time paying the penalty called for under the SEP Policy. For these respondents, a smaller civil penalty will still provide necessary deterrence while at the same time encouraging this significant public health SEP.

o OECA's draft Action Plan To Integrate Environmental Justice for FY 2004-2005 specifically mentions EPA's focus on reducing the risks of lead-based paint in low-income communities, which often have a high incidence of childhood blood-lead poisoning associated with older, substandard housing.

o OECA's January 5, 2004 guidance on "Recommended Ideas for SEPs" includes lead-based paint abatement projects as one of the project ideas that have the greatest potential for significant and measurable environmental and/or public health benefits.

OECA believes that the proposal to provide an exception to the SEP Policy for Section 1018 cases, as set forth above, provides significant health benefits and is an important step towards meeting the goal of ending childhood lead poisoning by 2010.

If you have any questions about Section 1018 administrative enforcement settlements, please contact Stephanie Brown, Associate Director, Toxics and Pesticides Enforcement Division at (202) 564-2596. Questions about the SEP Policy in general, or this memorandum in particular, may be addressed to Susan O'Keefe, Associate Director, Special Litigation and Projects Division at (202) 564-4021, or to Beth Cavalier or Melissa Raack. Beth can be reached at (202) 564-3271. Melissa can be reached at (202) 564-7039.

cc: Walker B. Smith, Director
Office of Regulatory Enforcement

Randolph L. Hill, Deputy Director
Office of Regulatory Enforcement

Ann Pontius, Director
Toxics and Pesticides Enforcement Division

Stephanie Brown, Associate Director
Toxics and Pesticides Enforcement Division

Robert Kaplan, Director
Special Litigation and Projects Division

Susan O'Keefe, Associate Director
Special Litigation and Projects Division

Bruce Gelber, Chief
Environmental Enforcement Section
US Department of Justice

Karen Dworkin, Assistant Chief
Environmental Enforcement Section
US Department of Justice