

Paul J. Ruge, Jr.

Objective Summary: I have over 10+ years of experience conducting TSCA Lead RRP & Lead Disclosure Rule compliance inspections on behalf of the Environmental Protection Agency. My objective is to uphold the standards of EPA's programs and ensure the quality of the files and documents used for case development

<u>Skills:</u>	TSCA Lead-Based Paint	1018 Lead Disclosure Rule inspections
	RRP Rule Inspections	Residential Construction Trades
	Home Renovation	Built multiple homes from their foundation
	Interior & Exterior painting	Sheet-rocking and Spackling

Professional Experience:

2012 to Present: Senior Environmental Employee (SEE) Lead Inspector

Duties: Conduct Renovate, Repair, & Paint (RRP) Rule and 1018 Lead Disclosure Rule compliance inspections. Conduct both onsite inspections to document work practice issues and Records Inspections to document potential violations in development of the administrative record for potential enforcement matters.

2000 to 2012: Verizon Telephone (landline) – New York, West Virginia

Duties: Outside repair and installation manager – Directing and overseeing 16 person outside maintenance, repair, and installation workgroup.

1970 to 2000: Partner and manager in family Oldsmobile, Subaru, and Chrysler auto franchises.

Education: Clarkson College of Technology: Mechanical Engineering and Industrial Distribution Attended (did not complete)– 1965 to 1970

CRAIG E. YUSSEN

Objective summary: I have over 30+ years of experience as a Chemical Engineer working for the Environmental Protection Agency in Region III's Philadelphia Office. My objective is to continue to work to ensure EPA's mission to protect human health and the environment through my contributions to the TSCA program.

<u>Skills:</u>	Environmental compliance	Environmental enforcement
	TSCA Lead-Based Paint	Program Leadership
	Regulatory inspections	Microsoft Office
	Case development.	Application of Penalty Policy

Experience: **August 1990 to present:** Chemical Engineer – United States Environmental Protection Agency Region I II (Philadelphia, PA)

Duties: Enforcement Coordinator for the Emergency Planning and Community Right-to-Know (EPCRA) Section 313 enforcement program. Inspector and case developer for EPCRA Section 313 program. Case developer for other enforcement programs such as Lead Enforcement and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

July 1988 to June 1990: Design Engineer – United Engineers and Constructors, Inc. (Philadelphia, PA)

Duties: Designing instrumentation for industrial processes and performing chemical process design calculations.

Education: **The Ohio State University (Columbus, OH)** Degree: Master of Science in Chemical Engineering (March 1988)

Drexel University (Philadelphia, PA) Degree: Bachelor of Science in Chemical Engineering (June 1987)

LEAD RENOVATION, REPAIR, AND PAINTING RULE INSPECTION REPORT

- I. FACILITY:** Prime Cut Paint
1414 Baychester Avenue
Norfolk, VA 23503
757-305-2040 (cell)
primecutpaint@gmail.com
- II. DATE OF INSPECTION:** September 5, 2019
- III. EPA INSPECTOR(S):** Paul J. Ruge Jr. SEE SSA-I
- IV. EPA REGION III, LAND AND CHEMICALS DIVISION (LCD)/TOXICS PROGRAMS BRANCH (TPB)**
- Karen Melvin, Director, Enforcement and Compliance Assurance Division
 - Carol Amend, Chief, Air, RCRA & Toxics Branch
 - Aquanetta Dickens, Chief, Toxics Section
- V. PURPOSE OF INSPECTION:**

The EPA conducted an inspection on September 5, 2019 of Prime Cut Paint, in response to a tip/complaint alleging Prime Cut Paint's failure to follow lead safe work practices while performing a renovation at 114 S. Broad Street, Suffolk, VA 23434. The tip/complaint was received on August 22, 2019 via the EPA RAV System. The inspection was performed in order to determine Prime Cut Paint's level of compliance with the Renovation, Repair, and Painting (RRP) Rule.

VI. BACKGROUND INFORMATION:

On August 26, 2019, the EPA sent an inspection notice via UPS to Prime Cut Paint to establish an inspection on September 4, 2019 at 9:00 AM to determine Prime Cut Paint's level of compliance with the Renovation, Repair, and Painting Rule. Prime Cut Paint was contacted on August 29, 2019 via phone and Inspector Ruge spoke with Robert Lauter, Proprietor. The date, time, and location was confirmed. The date was changed to September 5, 2019, the time and location remained the same. During the call, Inspector Ruge requested that Prime Cut Paint make available for the inspector a list of contracts for renovations they performed in pre-1978 properties or child-occupied facilities in the past year, as was requested in the notice.

Background About the Company

According to Dun & Bradstreet, Prime Cut Paint employs an undetermined number of individuals, has an undisclosed annual revenue, and has been in business since 2017. No other persons or companies were mentioned as being involved with this company and no bankruptcies were reported.

On August 26, 2019, Inspector Ruge checked the FLPP database to determine if Prime Cut Paint is a certified RRP firm. Records show that Prime Cut Paint is not listed in FLPP as a certified firm.

Background

The tip/complaint was received on August 22, 2019 alleging Prime Cut Paint's noncompliance with the Renovation, Repair, and Painting Rule. The tipster is a homeowner who entered into a contract with Prime Cut Paint on July 20, 2019 to perform renovation work at 114 S. Broad Street, Suffolk, VA 23434 and observed unsafe work practices while work was being performed. On August 26, 2019, EPA sent out a declaration form to the tipster requesting a written testimony regarding the alleged violations observed and to submit any pictures, copies of executed contracts, and other information to support the allegations. In response to EPA's written request, on September 4, 2019, the tipster's spouse, submitted a completed declaration form and pictures by hand to Inspector Ruge during his site visit.

Information about the Property Where Alleged Violation Occurred

The violation is alleged to have occurred at 114 S. Broad Street, Suffolk, VA 23434. The latitude/longitude coordinates for this property address are 36.728780/-76.593418 according to <http://itouchmap.com/latlong.html>. According to RealQuest, this property was built in 1906. No reply has been received from the Virginia Department of Health of elevated blood lead levels for this property address.

Site Visit

On September 4, 2019, Inspector Ruge arrived at 114 S. Broad St., Suffolk, VA 23434. Upon arrival, Mr. Ruge introduced himself to the homeowner (the spouse of the tipster), produced his credentials, and explained the reason for his visit. Mr. Ruge then presented and requested the homeowner to sign the Consent for Access form, which was done by both the tipster and the tipster's spouse.

The homeowners then accompanied Mr. Ruge around the exterior of the house pointing out various areas where Prime Cut Paint had scraped, sanded, and performed other preparation work for painting. Mr. Ruge observed paint chips from the scraping on the ground all around the foundation of the house. Mr. Ruge observed areas where the paint had been sanded to the point that the wood siding was exposed. Mr. Ruge observed that certain areas had been painted over with a white primer paint, including some areas where the painted surface had not been scraped at all and the paint was peeling underneath the primer.

Mr. Ruge then accompanied the tipster upstairs where the tipster showed Mr. Ruge where Prime Cut Paint had scraped the metal roof.

The tipster's spouse provided the declaration form to Mr. Ruge by hand, that had been requested in the letter dated August 26, 2019.

VII. OPENING CONFERENCE

On September 5, 2019 at approximately 9:00 AM, Inspector Paul Ruge arrived at the office of Prime Cut Paint to conduct an inspection to determine Prime Cut Paint's level of compliance with the Renovation, Repair, and Painting Rule. Upon arrival, the inspector introduced himself, presented his credentials to Robert Lauter, Proprietor, and explained the purpose of his visit. The inspector asked Mr. Lauter if he was the person authorized to give consent to the inspection. Mr. Lauter stated that he was, in fact, the appropriate person to consent to the inspection and sign on behalf of the company. Once this was established, Inspector Ruge presented and explained the Notice of Inspection Form to Mr. Lauter and both the inspector and Mr. Lauter signed the form. Next, Inspector Ruge presented and explained the Confidential Business Information Form to Mr. Lauter and Mr. Lauter signed the form. No questions were asked about the forms.

After these forms were presented and signed, Inspector Ruge proceeded to explain that the purpose of the inspection was to determine Prime Cut Paint's level of compliance with the Renovation, Repair, and Painting (RRP) Rule. The inspector also indicated that, as part of the inspection, he would be requesting to see contracts and/or statements of work for renovations performed in the past year as requested in the inspection notification letter sent out on August 26, 2019. The inspector stated that he would be selecting and scanning a percentage of these contracts and would be looking to identify where Prime Cut Paint documented compliance with the various provisions of the Renovation, Repair, and Painting Rule (e.g. work practice standards, pre-Renovation Education, renovator and firm certifications, etc.).

Mr. Lauter stated that his company was founded in December 2012, has an annual revenue of approximately \$23,600, and has one employee, himself. He stated that he is the sole owner

and his company goes by no other name or has any d/b/a's.

Mr. Lauter stated that he was a State of Virginia Class C licensed paint and wallcovering sub-contractor doing business primarily in the Hampton Roads area of Virginia. Mr. Lauter stated that he did not consider himself or his business as a general contractor, and indicated that the homeowner or whoever hires him is the person to pull permits for the work to be done, and is therefore the general contractor.

Inspector Ruge asked Mr. Lauter if he was familiar with the Repair, Renovate, and Paint (RRP) Rule and if the company was certified with the EPA and employed any certified renovators. Mr. Lauter stated that he was familiar with the RRP Rule and he was not an EPA certified firm nor did he employ a certified renovator.

Mr. Lauter stated that he did not have any employees. He stated that if he did need any help, he would hire a temporary worker. Mr. Lauter stated that he was allowed to hire a temporary worker for an annual payroll limit of \$500 per year according to the rules of the IRS and the Commonwealth of Virginia.

Mr. Lauter stated that he did not use any sub-contractors.

Mr. Lauter stated that he contracted for ten jobs over the past twelve months. He indicated that four of them were for residences built prior to 1978. He presented a list of ten jobs to Inspector Ruge indicating which jobs were for residences built prior to 1978. Inspector Ruge requested the contracts and/or the description of work for the four jobs indicated as pre-1978 construction.

Mr. Lauter provided the four contracts with a work list on each. Inspector Ruge did not observe where a "Renovate Right" pamphlet was provided to the homeowner for each of these jobs. Inspector Ruge also did not observe any lead safe work practices checklist attached to any of the contracts. Mr. Lauter stated that he felt he did not have to follow the RRP Rules as he was a sub-contractor and the persons pulling the permits, including the homeowners, were considered the contractor and they were responsible for the notifications. Mr. Lauter stated that he did provide the "Protect Your Family from Lead in Your Home" to some customers and provided a copy to the inspector. He stated that he did provide it to the complainant.

Mr. Lauter provided a notarized statement describing his work at 114 S. Broad St., Suffolk, VA 23434. He also provided an e-mail chain of e-mails sent back and forth between him and the customer (the tipster in this instance). Mr. Lauter stated that the customer was doing board

and window replacement and did most of the scraping on the house.

Mr. Lauter also stated that the Commonwealth of Virginia required a contractor to have an abatement classification as well as the EPA certification if more than 20 square feet of paint was disturbed.

VIII. REVIEW OF FILES/AVAILABLE DOCUMENTS:

Based on the number of renovations performed on pre-1978 constructed properties in the past year, the EPA inspector requested all four to be scanned for review. The list of property addresses along with the year built, and contract dates are listed below:

RENOVATION CONTRACTS:

	<u>ADDRESS</u>	<u>CONTRACT DATE</u>	<u>YR BLT</u>
1.	114 S. Broad St., Suffolk, VA 23434	7/20/2019	1906
2.	238 Mt. Vernon Ave., Portsmouth, VA 23707	6/10/2019	1910
3.	3716 Northmoor Ct., Virginia Beach, VA 23452	4/19/2019	1976
4.	3403 Broadway St., Portsmouth, VA 23703	9/12/2019	1955

LOCATION OF CONTRACTS

	<u>ADDRESS</u>	<u>GPS COORDINATES</u>
1.	114 S. Broad St., Suffolk, VA 23434	36.728780/-76.593418
2.	238 Mt. Vernon Ave., Portsmouth, VA 23707	36.850681/-76.337212
3.	3716 Northmoor Ct., Virginia Beach, VA 23452	36.845148/-76.101940
4.	3403 Broadway St., Portsmouth, VA 23703	36.861835/-76.347305

1. The latitude/longitude coordinates for this property address are according to <http://itouchmap.com/latlong.html>. According to RealQuest Professional, this property was built in 1906. According to the Virginia Department of Health there have been no known elevated blood lead levels for this property address.

2. The latitude/longitude coordinates for this property address are according to <http://itouchmap.com/latlong.html>. According to RealQuest Professional, this property was built in 1910. According to the Virginia Department of Health there have been no known elevated blood lead levels for this property address.

3. The latitude/longitude coordinates for this property address are according to <http://itouchmap.com/latlong.html>. According to RealQuest Professional, this property was built in 1976. No reply has been received from the Virginia Department of Health of elevated blood lead levels for this property address.

4. The latitude/longitude coordinates for this property address are according to <http://itouchmap.com/latlong.html>. According to RealQuest Professional, this property was built in 1955. According to the Virginia Department of Health there have been no known elevated blood lead levels for this property address.

IX. CLOSING CONFERENCE

After all transaction documents were recorded on the Receipt for Documents Form, Inspector Ruge provided a copy of the Receipt for Documents Form to Mr. Lauter which Mr. Lauter signed. The inspector provided Mr. Lauter with a compliance assistance package and briefly explained its contents. Inspector Ruge asked Mr. Lauter if he had any additional questions. Mr. Lauter inquired as to when he might hear something. Inspector Ruge stated that a report must be written and presented to the EPA Case Development Officers. No time frame was given.

Inspector Ruge thanked Mr. Lauter for his time and left the premises of Prime Cut Paint at approximately 12:00 PM.

Inspection Photograph Log Sheet

Case Number: RRP 2019060

Date: 9/5/2019

Inspector: Paul J. Ruge Jr.

Contractor: Prime Cut Paint

Address of 114 S. Broad St.

Renovation: Suffolk, VA 23434

Photographer: Paul J. Ruge Jr.

[illegible]

Inspection Photograph Log Sheet

Case Number: RRP 2019060

Date: 9/5/2019
Inspector: Paul J. Ruge Jr.
Contractor: Prime Cut Paint
Address of: 114 S. Broad St.
Renovation: Suffolk, VA 23434
Photographer: Paul J. Ruge Jr.

[illegible]



Photo #: 001 Date: 9/4/2019 Time: 2:09 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Corner of Gittings St. and S. Broad St.
Comments: Locator
Photo By: Paul J. Ruge Jr.



09/04/2019 14:10

Photo #: 002 Date: 9/4/2019 Time: 2:10 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Street, front of 114 S. Broad St.
Comments: Front of 114 S. Broad St. showing white
and green color paint
Photo Bv: Paul J. Rude Jr.

09/04/2019 14:10

114



Photo #: 003 Date: 9/4/2019 Time: 2:10 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Sidewalk, front of 114 S. Broad St.
Comments: Closeup showing white and green paint
and paint scraped to bare wood
Photo By: Paul J. Ruoe Jr.

09/04/2019 14:10

Photo #: 004 Date: 9/4/2019 Time: 2:10 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Porch, front of house
Comments: Windows with chipping paint, notice on
glass
Photo By: Paul J. Rude Jr.

09/04/2019 14:11

Photo #: 005 Date: 9/4/2019 Time: 2:11 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Front porch
Comments: Window closeup, chipping paint on wood
windows
Photo By: Paul J. Ruge Jr.

HISTORIC CONSERVATION OVERLAY DISTRICT CERTIFICATE OF APPROPRIATENESS



THIS CERTIFICATE MUST BE POSTED IN A VISIBLE LOCATION ON THE PREMISES

This is to certify that the roof at the following location has met the requirements of Section 31-413 (f) (1) of the Unified Development Ordinance:

Application Number: HLC2019-00021
Property Address: 114 S. Broad St.
Property Owner: Mr. and Mrs. Gillis
Tax Map ID: 34G16(6)A*9A*10
Date: June 17, 2019

The following actions are approved by request:

1. Replace the existing asphalt shingle main roof with a PermaLock aluminum metal slate stamped shingle roof to consist of the color James Geddy Gray (CW811), or equivalent from the approved Williamsburg Color Collection.
2. Replace the existing asphalt shingle porch roof with a standing seam metal roof to consist of the color Tucker Pale Gray (CW805), or equivalent from the approved Williamsburg Color Collection.
3. Install a 3 foot tall scalloped decorative wrought iron fence, and (2) two matching 3 foot tall scallop decorative wrought iron walkthrough and driveway gates, extending from the northern front porch corner, wrapping around the front yard perimeter, to the southern front porch corner.
4. All wrought iron fencing and hardware is to be metal and to consist of the color black.
5. Install a 3 1/2 foot tall wooden rear yard fence across the back yard and the southern side yard connecting to the back corner of the home, to be stained Scrivener Store Gold (CW308), or equivalent from the approved Williamsburg Color Collection.
6. Repaint the previously painted home with the color Wetherburn's Pale Blue (CW622) for the main portion of the home, Mopboard Black (CW 123) for the shutters, door, and sashes, Market Square Tavern Shell Medium (CW 704) for the trim, Red Lion Inn Gray (CW 702) for accents, and Apollo Room Blue Medium Light (CW619) for the porch ceiling, or equivalent from the approved Williamsburg Color Collection.

THIS CERTIFICATE IS VALID FOR SIX (6) MONTHS FROM THE DATE LISTED ABOVE. THE APPROVED ACTION(S) MUST COMMENCE WITHIN THE PRESCRIBED PERIOD UNLESS A REQUEST FOR AN EXTENSION IS APPROVED. REQUESTS FOR EXTENSIONS MUST BE MADE IN WRITING TO THE ADMINISTRATOR PRIOR TO COMMENCEMENT OF WORK.

09/04/2019 14:11

Photo #: 006 Date: 9/4/2019 Time: 2:11 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Front Porch
Comments: Building Permit in window
Photo By: Paul J. Ruge Jr.

09/04/2019 14:11

Photo #: 007 Date: 9/4/2019 Time: 2:11 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Front Porch
Comments: Chipping paint by front door
Photo By: Paul J. Ruge Jr.

09/04/2019 14:12

Photo #: 008 Date: 9/4/2019 Time: 2:12 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Front Porch
Comments: House paint (green) and primer (white)
Photo By: Paul J. Ruge Jr.

09/04/2019 14:12

Photo #: 009 Date: 9/4/2019 Time: 2:12 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Left side porch
Comments: Bare wood and paint color testing
Photo By: Paul J. Ruge Jr.

09/04/2019 14:12

Photo #: 010 Date: 9/4/2019 Time: 2:12 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Left side porch
Comments: closeup of sanded bare wood area
Photo By: Paul J. Ruge Jr.

09/04/2019 14:13

Photo #: 011 Date: 9/4/2019 Time: 2:13 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Left side porch
Comments: Paint sanded to bare wood
Photo By: Paul J. Ruge Jr.

09/04/2019 14:13

Photo #: 012 Date: 9/4/2019 Time: 2:13 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Base of porch – left side
Comments: Paint chips on ground
Photo By: Paul J. Ruge Jr.

09/04/2019 14:13

Photo #:013 Date: 9/4/2019 Time: 2:13 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Left side of house
Comments: White primer over areas of scraped and
peeling paint
Photo By: Paul J. Ruge Jr.

09/04/2019 14:14



Photo #: 014 Date: 9/4/2019 Time: 2:14
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Left side porch along foundation
Comments: Paint chips on ground
Photo By: Paul J. Ruge Jr.

09/04/2019 14:15

Photo #: 015 Date: 9/4/2019 Time: 2:15 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Left side front porch steps
Comments: Paint chips on ground
Photo By: Paul J. Ruge Jr.

09/04/2019 14:17

Photo #: 016 Date: 9/4/2019 Time: 2:17 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Front of house
Comments: Front porch roof showing peeling paint
Photo By: Paul J. Ruge Jr.



09/04/2019 14:17

Photo #: 017 Date: 9/4/2019 Time: 2:17 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Front of house
Comments: Right side of house front showing primed
 areas
Photo By: Paul J. Ruge Jr.



09/04/2019 14:18

Kleen

Photo #: 018 Date: 9/4/2019 Time: 2:18 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Right side of house
Comments: Sanded and primed area
Photo By: Paul J. Ruge Jr.

09/04/2019 14:18

Photo #: 019 Date: 9/4/2019 Time: 2:18 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Right side of house
Comments: Closeup of painted siding
Photo By: Paul J. Ruge Jr.

09/04/2019 14:18

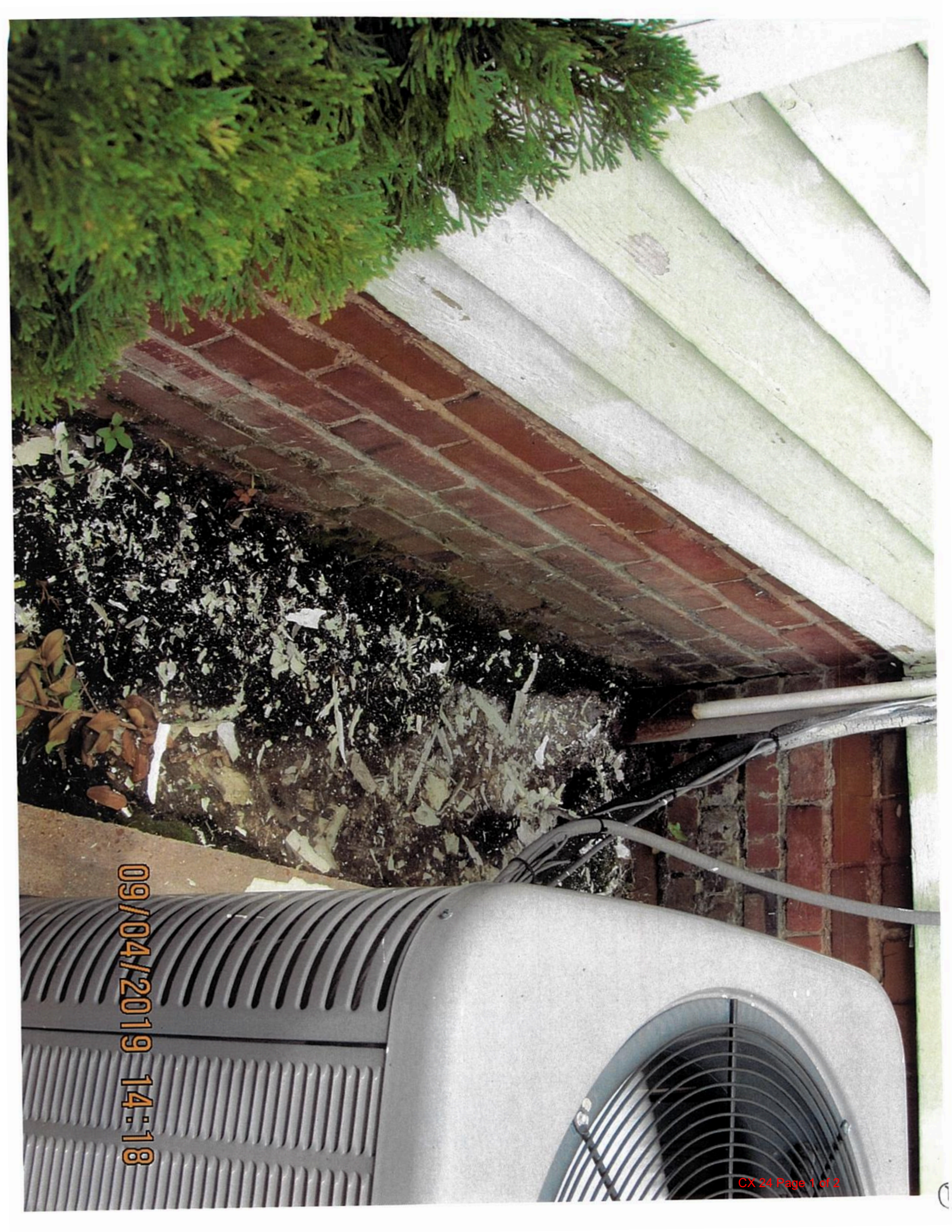


Photo #: 020 Date: 9/4/2019 Time: 2:18 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Right of house
Comments: Chips on ground
Photo By: Paul J. Ruge Jr.

09/04/2019 14:19

Photo #: 021 Date: 9/4/2019 Time: 2:19 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Right rear of house
Comments: Bags of paint chips raked up by Gillis
Photo By: Paul J. Ruge Jr.

09/04/2019 14:20

Photo #: 022 Date: 9/4/2019 Time: 2:20 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Right side toward rear of house
Comments: Prepped and primed areas
Photo By: Paul J. Ruge Jr.



Photo #: 023 Date: 9/4/2019 Time: 2:20 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Rear of house
Comments: Primed, scraped and sanded areas
Photo By: Paul J. Ruge Jr.

09/04/2019 14:22

Photo #: 024 Date: 9/4/2019 Time: 2:22 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Peak of house
Comments: Peeling paint on windows
Photo By: Paul J. Ruge Jr.

09/04/2019 14:25

Photo #: 025 Date: 9/4/2019 Time: 2:25 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Second floor, left side porch roof
Comments: Paint chips on roof
Photo By: Paul J. Ruge Jr.



09/04/2019 14:25

Photo #: 026 Date: 9/4/2019 Time: 2:25 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Second floor, left side porch roof
Comments: Prepped and primed side with chips on
roof
Photo By: Paul J. Ruge Jr.

CUT CORNER FOR EASY OPENING



SAVOGRAN

TSP

Trisodium Phosphate

Formulated for heavy duty cleaning. Removes greasy, sooty dirt and prepares painted surfaces for repainting.

DIRECTIONS: Read **WARNING** below before using this product.

Heavy duty cleaning: Dissolve 1/2 cup TSP in 2 gallons of hot water. Set pail on paper to avoid ring marks. **Walls and Woodwork**—squeeze excess cleaner from sponge or cloth and wash from bottom up to avoid streaking. A second washing may be needed. Rinse cleaned area with clean warm water. **Floors**—wring excess cleaner from mop or sponge and wash floor in small areas. Rinse with clean warm water and wipe up excess water. DO NOT allow water or TSP solution to stand in puddles.

Mildewed Deck and Siding: Remove by washing with solution of 1 cup of TSP dissolved in 3 quarts of warm water and add 1 quart bleach. Use with a U.S. EPA registered bleach product that contains use directions for mold and mildew control. Use solution to scrub area thoroughly, using scrub brush or coarse rags. TSP removes dirt and grime. If stain remains, use second application. (NOTE: Treat entire area, not just the stain.) When mildew stain is gone, rinse thoroughly with clean, warm water and dry surface completely before painting. Use mildew resistant paints where fungus has been a problem. If fungus grows on mildew resistant paint promptly consult with paint manufacturer before removing the fungus.

Lead paint dust: Follow heavy duty cleaning instructions every 2 to 4 weeks depending on level of dust until lead paint can be abated. Also recommended for use after the removal of lead paint for final cleanup. Contact your local Public Health Department for assistance with lead paint abatement.

WARNING: Contains Trisodium Phosphate (C.A.S. 10101-89-0) and Sodium Sesquicarbonate (C.A.S. 533-96-0); DO NOT take internally. All strong cleaners are irritating and may cause burns to the skin and eyes. Wear full cover eye protection, gloves and long sleeved shirt to help avoid contact with powder and solution. Watch out for splashes and overhead runs and drips and DO NOT allow solution to get into gloves or soak through shirt into skin. Thoroughly wash all contaminated clothing before reuse.

First Aid: If swallowed, promptly drink large quantities of water and call physician, hospital emergency room or poison control center for way to induce vomiting, transport to medical facility immediately. Eye contact: Flood with plenty of water for at least 15 minutes; get medical attention promptly. Skin contact: Wash thoroughly with soap and water. If redness of skin occurs, discontinue use and consult physician promptly.

CAUTION: Hot TSP solutions will darken aluminum containers and may remove or degloss paints and enamels. Use very weak solution of TSP to clean printed floor coverings. TSP MAY DARKEN OAK, MAHOGANY and some other woods. Try TSP solution in inconspicuous place to be sure results will be satisfactory. KEEP TSP POWDER AND SOLUTIONS OUT OF REACH OF CHILDREN AND ANIMALS. Contact with TSP soaked papers or puddles may irritate animal's foot pads. NOT RECOMMENDED for use on glass surfaces. DO NOT allow TSP solution to come in contact with glass. Do not mix with acids. Use only according to mixing directions on container. Protect vegetation by spraying plants, grass and shrubbery with a fine water mist prior to using this product. Rinse plants and shrubs thoroughly after use.

If you have any questions, call us at **800-225-9872**, Mon-Thu, 9AM-4PM EST
or visit us at www.savogran.com

The Savogran Company, Norwood, MA 02062-0130

15F

09/04/2019 14:30

Photo #: 027 Date: 9/4/2019 Time: 2:25 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Chemical container box
Comments: Gillis's were going to use to seal leaded
paint
Photo By: Paul J. Ruge Jr.



TSP

Trisodium Phosphate

Formulated for heavy duty cleaning. Removes greasy, sooty dirt and prepares painted surfaces for repainting.

DIRECTIONS: Read **WARNING** below before using this product.

Heavy duty cleaning: Dissolve 1/2 cup TSP in 2 gallons of hot water. Set pail on paper to avoid ring marks. **Walls and Woodwork**—squeeze excess cleaner from sponge or cloth and wash from bottom up to avoid streaking. A second washing may be needed. Rinse cleaned area with clean warm water. **Floors**—wring excess cleaner from mop or sponge and wash floor in small areas. Rinse with clean warm water and wipe up excess water. DO NOT allow water or TSP solution to stand in puddles.

Mildewed Deck and Siding: Remove by washing with solution of 1 cup of TSP dissolved in 3 quarts of warm water and add 1 quart bleach. Use with a U.S. EPA registered bleach product that contains use directions for mold and mildew control. Use solution to scrub area thoroughly, using scrub brush or coarse rags. TSP removes dirt and grime. If stain remains, use second application. (NOTE: Treat entire area, not just the stain.) When mildew stain is gone, rinse thoroughly with clean, warm water and dry surface completely before painting. Use mildew resistant paints where fungus has been a problem. If fungus grows on mildew resistant paint promptly consult with paint manufacturer before removing the fungus.

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WARNING: Contains Trisodium Phosphate (C.A.S. 10101-89-0) and Sodium Sesquicarbonate (C.A.S. 533-96-0); DO NOT take internally. All strong cleaners are irritating and may cause burns to the skin and eyes. Wear full cover eye protection, gloves and long sleeved shirt to help avoid contact with powder and solution. Watch out for splashes and overhead runs and drips and DO NOT allow solution to get into gloves or soak through shirt into skin. Thoroughly wash all contaminated clothing before reuse.

First Aid: If swallowed, promptly drink large quantities of water and call physician, hospital emergency room or poison control center for way to induce vomiting, transport to medical facility immediately. Eye contact: Flood with plenty of water for at least 15 minutes; get medical attention promptly. Skin contact: Wash thoroughly with soap and water. If redness of skin occurs, discontinue use and consult physician promptly.

CAUTION: Hot TSP solutions will darken aluminum containers and may remove or degloss paints and enamels. Use very weak solution of TSP to clean printed floor coverings. TSP MAY DARKEN OAK, MAHOGANY and some other woods. Try TSP solution in inconspicuous place to be sure results will be satisfactory. KEEP TSP POWDER AND SOLUTIONS OUT OF REACH OF CHILDREN AND ANIMALS. Contact with TSP soaked papers or puddles may irritate animal's foot pads. NOT RECOMMENDED for use on glass surfaces. DO NOT allow TSP solution to come in contact with glass. Do not mix with acids. Use only according to mixing directions on container. Protect vegetation by spraying plants, grass and shrubs with a fine water mist prior to using this product. Rinse plants and shrubs thoroughly after use.

If you have any questions, call us at 800-225-9872, Mon-Thu, 9AM-4PM EST
or visit us at www.savogran.com

The Savogran Company, Norwood, MA 02062-0130

15F

09/04/2019 14:30

Photo #:028 Date: 9/4/2019 Time: 2:30 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Chemical container box
Comments: Chemical use directions
Photo By: Paul J. Ruge Jr.

09/04/2019 14:49

Photo #: 029 Date: 9/4/2019 Time: 2:49 PM
Address: 114 S. Broad St., Suffolk, VA 23434
Location: Left rear side yard
Comments: Chips on ground
Photo By: Paul J. Ruge Jr.

My Inspector Credential Records Overview



[Regional Credential Overviews](#)

[Regional Document Libraries](#)

My Credential Records:

ruge

×

✓		Name		Inspector Full Name	Inspector Type	Region	Agency	Statute	Credential Status	Current Credential	Credential Expiration Date	Request Type	Previous Cre
		Ruge_Jr._Paul__CY2020_9-21	...	Paul Ruge,Jr.	SEE Enrollee	03	Center for Workforce Inclusion	TSCA	Active	2003101517R	10/15/2023	Renewal	11386

Some files might be hidden. [Include](#) these in your search

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FEDERAL LEAD-BASED PAINT PROGRAM

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[A/A](#)

- ☒ Applications
- ☒ Certifications & Accreditations

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 - ☒ Payments
 - ☐ Refunds
 - ☐ Notifications
 - ☐ Students

Search Text: Robert Lauter

☐ Exact Search[Application Search Filters](#)[Certification/Accreditation Search Filters](#)[Applicant Search Filters](#)[Payment Search Filters](#)

- ☒ Application Number
- ☒ Firm/Trainer Name
- ☒ Contact/Individual Name
- ☐ Email

- ☒ Certification Number
- ☒ Applicant Name
- ☐ Application Number

- ☒ Applicant Number
- ☒ Firm/Trainer Name
- ☒ Contact/Individual Name
- ☒ Street Address
- ☐ Email
- ☐ Phone Number

- ☒ Payment ID
- ☐ Payment Number
- ☐ Remitter Name
- ☐ Application Number

Applications

Certifications & Accreditations

Applicants

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Show 10 entries

Filter Results:

Application #	CDX Program	Type	Applicant Name	Entered	Status	Assigned	Task	Days Open
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No data available in table

Showing 0 to 0 of 0 entries

[Previous](#) [Next](#)

Application search time: 6.643 seconds

version 4.0.6

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- ☐ Notifications
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Search Text: Prime Cut Paint ☐ Exact Search

[\(-\)Application Search Filters](#) [\(-\)Certification/Accreditation Search Filters](#) [\(-\)Applicant Search Filters](#) [\(-\)Payment Search Filters](#)

<input checked="" type="checkbox"/> Application Number	<input checked="" type="checkbox"/> Certification Number	<input checked="" type="checkbox"/> Applicant Number	<input checked="" type="checkbox"/> Payment ID
<input checked="" type="checkbox"/> Firm/Trainer Name	<input checked="" type="checkbox"/> Applicant Name	<input checked="" type="checkbox"/> Firm/Trainer Name	<input type="checkbox"/> Payment Number
<input checked="" type="checkbox"/> Contact/Individual Name	<input type="checkbox"/> Application Number	<input checked="" type="checkbox"/> Contact/Individual Name	<input type="checkbox"/> Remitter Name
<input type="checkbox"/> Email		<input checked="" type="checkbox"/> Street Address	<input type="checkbox"/> Application Number
		<input type="checkbox"/> Email	
		<input type="checkbox"/> Phone Number	

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Show 10 ▼ entries

Filter Results:

Application #	CDX Program	Type	Applicant Name	Entered	Status	Assigned	Task	Days Open
No data available in table								

Showing 0 to 0 of 0 entries

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Application search time: 28.874 seconds

version 4.0.6



114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>

Wed, Aug 21, 2019 at 5:17 PM

To: Gina Gillis <ggillismail@gmail.com>

Greetings. This email will confirm that at approximately 11:15 am this morning I arrived at your home in compliance with your expressed directions sent via this email thread less than 12 hours prior at which time I left paper work and began to collect my equipment, as I was in the process of loading my truck you summoned law enforcement citing threats of a physical nature. I provided the officer with not only a copy of the contract, but of the email directing me onto the property, and requested her card which she provided as well as consented to provide an affidavit if I required. Regarding lead certification neither federal nor commonwealth law requires certification for PRE work, however the pamphlet entitled "Protect Your Family from Lead in Your Home" was affixed to my copy of the contract which your husband signed. I keep it because I am required to do so for three years from execution of service, I am not required to surrender a copy to you, furthermore a copy was provided (or should have been pursuant to federal law) by the city of Suffolk when you received your certificate of appropriateness and work permit, you can google the name if you want your own copy. Lead certification is for abatement as defined by the uniform building code as being "15% or greater dyshesion of coatings" My Disclaimer clearly states "Abatement is not a function of Prime Cut Paint." Moving forward, it is my position that you and your husband are in fundamental breach of contract and that your actions today in conjunction with the erratic and even contradictory emails, which bounce back and forth between demanding I "scrape" to wanting lead certifications, indicate that this breach is malicious and hence actionable on levels above and beyond the normal disagreements over money that arise from time to time. Hence given the totality of the circumstances I find it prudent at this time to inform you of the following.

1.) The terms signed allow me to injunct the property in question "While litigation is going on." The title will be encumbered until all appeals are settled at which time if the court awards me damages I can then transition into a Mechanic's lien, permanently encumbering the property. Since neither you nor your husband show any evidence of being gainfully employed, thus garnishing your wages is impossible, once the lien is actuated I can propose a bill of unlawful detainer to have you removed from the premises, if it pleases the court to grant the request.

2.) Since there will be two matters before the court, the injunction on title of real property worth in excess of 25,000.00 and the warrant in debt which is worth less, the circuit court enjoys consecutive jurisdiction over both matters thus any action will be filed at the circuit court level, not small claims. Though I am under no compulsion to inform you of your rights, I will anyway, you do have a right to a jury. If full payment of the materials (using check, money order or debit card) has not been paid by September 5th 2009, in conjunction with the previously issued 10 day notice of intent, I will bring suite against you in circuit court for the outstanding balance, plus 25% late fee and 15% delinquent fee outlined in Article 10. Whether or not I decide to seek additional money damages for malicious infliction of mental anguish based upon your abhorrent behavior today, will depend entirely on how you respond moving forward. By the way you misspelled Cordially, in your last email.

Good day to you mam

Rob Lauter
www.primecutpaint.com

[Quoted text hidden]

Prime Cut Paint
1414 Baychester Ave.
Norfolk, Virginia 2350
Service Contract particulars/ Coastal convenience store group

You recently requested an estimate.

Quantity	Description of item	Price per unit	Price
1	Exterior standard production paint job, without warranty		Labor 5,125.00 Materials Budget 1,500.00
1	Exterior custom package with six month warranty (see attached info) and rear workshop included		Labor 6,125.00 Materials budget 1,775.00
			Exterior Flat or Satin walls, semi gloss trim, direct to metal roof
			Product options
			PPG (Glidden) Fortis-350
			Sherwin Williams Ressillence
			PPG Gripper primer
			Sherwin Williams Pro-Cryl Primer
			Production,6,625.00
			Custom 8,000.00

DAN 334-6468
GINA 334-6469

Prime Cut Paint Work Detail Agreement

Client/Agent MR. & MRS. DANGILLIS

The aforementioned agrees to the following work detail agreement which in conjunction with the attached terms and conditions shall constitute the covenant for this and all future projects in entirety. The terms shall serve as transferable to all future projects unless duly stipulated,

Work Shall commence on July 20th - 2019 note: SATURDAY

And to be performed at 114 South Broad St. Suffolk VA. 23434

Work Schedule

1. PRESSURE WASH
2. SCRAPE LOOSE COATINGS
3. CAULK CRACKS.
4. SPOT PRIME RAW AREAS
5. APPLY READY PATCH
6. COAT ENTIRE EXTERIOR -
- 7.
- 8.
- 9.
- 10.

16.30.15

Material schedule

1. TRIM Semi gloss ^{Neutral Ground} ~~WHITE~~ SW 7568 FORTIS - 350
2. SASHES SW 7069 IRON ORE AND BUTTERS FORTIS-350
3. SW 0018 TEAL STENCIL - WALLS FORTIS-350
4. ROOF FLOOR OF PORCH - ~~COLORED GRAY~~ SW ~~2843~~, DTM.
5. (PITT) Blue SKY SW 0063 COILING OF PORCH ~~BY~~ (SW)
6. (Floor) Solid or Semi BODIED ACRYLIC STAIN
- 7.

BOX CAULK.

TAPE?

5 GALLON PROXYL

Porch Floor/Porch Color

Boycroft Brass SW 2843

TRIM - Semigloss "Neutral ground" SW 7568

SASHES > Semigloss "Iron Ore" SW 7069
SHUTTERS

WALLS - Satin "Teal Stencil" SW 0018

Metal Roof - Semi-gloss "Raycroft Brass" SW 2843

Porch Floor - Semi-gloss "Raycroft Brass" SW 2843

Ceiling of Porch - Semi-gloss "Blue Sky" SW 0063

Back Building - Solid or Semi Acrylic Stain

8.

Labor costs for this project shall be 6,125.00 with 1,837.50 to be paid in advance for security. The remainder to be paid in conjunction with attached terms and conditions.

Materials to be provided by contractor and reimbursed by client agent, YES

Materials to be provided by client/ agent NO.

Production package NO Custom Package YES

Contractor ROS CARTER 81992

Client/Agent 

Prime Cut Paint

License # 2705153481

Terms and conditions

1. The contractor shall designate and perform in accordance with all terms, written specifications and drawings only, contained or referred to herein. All materials shall conform to bid specifications with party specifying responsible for quality of product.

2.) **WORK FORCE:** Contractor is, or shall designate qualified representative with experience in residential and commercial painting and restoration.

3.) **LICENSES and PERMITS:** Contractor shall maintain a business license, if required by state or local law, and will comply with all other license and permits of the city, state and federal government, as well as all other requirements of law.

4) **TAXES:** Contractor agrees to include and pay all applicable taxes, including tax where applicable on materials supplied.

5) **INSURANCE:** Contractor agrees to provide general liability insurance, automotive liability insurance, workers compensation insurance, and any other insurance required by law.

6) **LIABILITY:** Contractor shall indemnify the client/owner, its agents, and employees from liabilities which arise out of contractor's work. It is understood and agreed that the contractor is not liable whatsoever for any damages caused by sole negligence or willful misconduct of the client/owner or any indemnified party. Contractor shall not be liable for any acts of God. Acts of God defined as those caused by windstorm, hail, fire, flood, hurricane, earthquakes and freezing etc. Under these circumstances, contractor shall have the right to renegotiate terms and prices of this agreement within **(60) days**. Any illegal trespass, claims and/or damages resulting from work requested that is not on property owned by client/owner management and control shall be the sole responsibility of the client owner

7) **SUBCONTRACTORS:** Contractor reserves the right to hire qualified subcontractors to perform specialized functions of work requiring specialized equipment or assistance of any kind.

8) **CHANGE ORDERS:** Any additional services not shown in the corresponding WORK DETAIL AGREEMENT involving extra costs will be executed upon signed written orders **ONLY**, and will become an extra charge over and above the estimate.

9) **ACCESSIBILITY:** Access to Jobsite and areas within the scope are the sole responsibility of Client/ Agent. Client/Agent shall provide utilities to perform work. Client /Agent shall provide access to all parts of jobsite where contractor is to perform work as required by contract or other functions related thereto, during normal business hours and other periods of time. Contractor will perform work as reasonably practical after owner/client makes the site available for performance of work. Furniture and moveable fixtures such as appliances, Furniture etc. are the sole responsibility of client/agent, and if contractor agrees to move such items as part of the work detail agreement, this should not be interpreted as assuming liability for inadvertent damage to such items as a result of movement.

10) **FINANCIAL:** Client/Owner shall provide **30%** of the of labor costs for deposit unless waved or adjusted by contractor, and make payment to contractor **within (3) days** upon receipt of invoice for all materials. If materials invoice is not paid work shall halt until account has been settled. Once completion notice is issued the balance on labor is due **within (5) Days** . In the event the schedule for completion of work shall require more than 7 days, a progress bill will be presented and shall be paid **within (3) days** upon receipt of invoice. If invoice on labor is not paid work shall halt. Unless a separate retention agreement has been reached in writing by both parties. **10%** of labor shall be retained after completion notice is issued and a written punch list (, if deemed necessary by client agent is required to be submitted **within (10) business days** of receiving completion notice If no punch list is submitted within this time frame, **outstanding 10%** will be paid in full **within (5) days**, if punch list is submitted by client/ agent, additional work **MUST** be completed by contractor within (10) business days of submittal with a 10 dollar a day penalty for every day beyond this date. The remaining balance of the contract shall be due **UPON COMPLETION** of punch list. Completion defined as in accordance with industry standards as would be reached applying the legal standard of

preponderance of the evidence in a court of law given totality of the circumstances. **UNDER NO CIRCUMSTANCES** is any money beyond 10% retention to be withheld due to this punch list, and Client Agent must be on premises for final walk through while punch list is being completed. **7% WILL BE ADDED FOR ELECTRONIC FORMS OF PAYMENT**, including, credit cards, debit cards or automatic deposit. A late penalty of 25% shall be applied to the outstanding balance of all invoices made beyond the previously assigned due date. A **Custom package** is available for those seeking Warranty and multiple detailed finals. 15% Late fee shall be applied to all delinquent accounts

11) **TERMINATION/DELAY** This work order may be terminated by Client/owner with or without cause, upon (7) days advance written notice prior to commencement. Client/owner will be responsible to pay for all materials purchased and 10% of agreed upon amount of overall contract incurred in demobilizing. Contractor cannot be penalized for delay in execution of work resulting from circumstances arising beyond immediate domain of control, These circumstances include but are not limited to (i) inclement weather defined as rain, sleet snow, or sustained wind in excess of 20 mph. (ii) Any legal or licensure issue that arises as a result of oversight by client agent, or delay of work in trades prerequisite to execution of work detail agreement, including but not limited to Trim carpentry, tile, electrical/plumbing, plastering dry wall etc. (iii) Delay due to failure of Client agent, to meet stipulations of clause 10. These circumstances excluded, for every day past the agreed completion date the contractor prime cut paint shall be charged 50 dollars. (This does not include punch list items or touch up covered in retention). A daily work/weather log will be kept by contractor to catalogue reasonable delays.

12) **ASSIGNMENT:** The Client/agent and the contractor, respectively, bind themselves, their partners, successors, assignees, and legal representatives to the other party with respect to all covenants of this contract. In the event of sale or transfer of client/owner's interest in its business and/or the property which is the subject of this agreement. Client/Owner must first obtain the written consent of the contractor for the assignment of any interest in this agreement to be effective

DISCLAIMER

This proposal was estimated and priced based upon a visual site examination from ground level using ordinary means, at or about the time this proposal was prepared. The price quoted in this proposal for the work described, is the result of that ground level visual inspection and therefore this company will not be liable for any additional costs or damages for additional work not described herein, or liable for any incidents/accidents resulting from conditions, that where not ascertainable by said ground level inspection by ordinary means at the time inspection was performed. Prime Cut Paint cannot be held responsible for unknown or otherwise hidden defects. Any corrective work proposed herein cannot guarantee exact results. If client/agent provides materials or specifications of materials to be used, Prime Cut Paint is not responsible for defects of materials provided or specified. Property owner may have to vacuum after project is completed. **Abatement is not a function of Prime Cut Paint.**

ACCEPTANCE

Contractor is authorized to perform the work stated on the corresponding WORK DETAIL AGREEMENT. Payment will be 30% of labor to initiate work and the remaining balance(s) at time of billing. If payment is not received by Prime cut paint within (10)days after billing Prime Cut Paint, shall be entitled to all costs of collection, including attorney's fees and it shall be relieved of any obligation to continue performance under this or any other contract with client owner. Interest at per annum rate of 1% per month, or the highest rate permitted by law, will be charged on unpaid balance 45 days after billing.

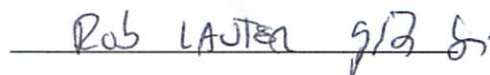
Notice: failure to make payment when due for completed work on construction jobs, will result in a mechanics lien on the title on aforementioned property pursuant to tittle 43 chapter 1 Va. Code, proceeded by injunctive relief.

Client/ Agent



Signature/Date

Contractor/Prime Cut Paint



Signature

Prime Cut Paint Work Detail Agreement

Van 352 653-8549

Client/Agent VONKETRICK MOORE

The aforementioned agrees to the following work detail agreement which in conjunction with the attached terms and conditions shall constitute the covenant for this and all future projects in entirety. The terms shall serve as transferable to all future projects unless duly stipulated,

Work Shall commence on 6-10-79. ASAP. note:

And to be performed at 238 MOUNT VERNON PORTSMOUTH VA. 23707.

Work Schedule

1. SCRAPE AND SAND ALL WALLS.
2. CAULK ALL CRACKS.
3. REPAINT ALL SURFACES.
4. FRONT SHUTTERS TO BE PAINTED
5. SOME PAINT CHIPS LEFT BEHIND
6. FRONT PORCH PAINTED RED
- 7.
- 8.
- 9.
- 10.

Material schedule

1. GILDED ESSENTIALS FIAT 100 300 1518.
2. GILDED SEMI GLOSS 461518528.
3. TAPE.
4. PAINTERS CAULK
5. SANDPAPER
- 6.
- 7.

8.

Labor costs for this project shall be 3,000.00 with 1,000 to be paid in advance for security. The remainder to be paid in conjunction with attached terms and conditions.

Materials to be provided by contractor and reimbursed by client agent, YES

Materials to be provided by client/ agent NO

Production package NO Custom Package YES

Contractor Rob M...

Client/Agent Vand...

Prime Cut Paint Custom Package.

For most of us our home or commercial property is our most valuable investment, few people think of a paint job in terms of protection, but the fact remains, especially with regards to exterior finishing, it has more to do with structural integrity than things such as roof shingles or replacement windows. With regards to the interior, especially on re-paints, many times a client will not notice a defect in the original coatings, weeks, sometimes even months after the property has been painted. The following constitute what you can expect when electing to purchase a custom paint job as opposed to the standard production package. **Please note custom packages take more time, than the standard production job and abatement is not a function of prime cut paint.**

- 1.) **Unlimited finish coats.** Unlike the base coat, finish coats require time but very little paint. Prime Cut Paint offers a **6 month warrantee from time of completion, which allows the client/agent to schedule additional finish coats on areas that appear to not be uniform or otherwise pleasing**, this does not include additional material costs, however on most projects, there is remaining product to be utilized to this end. If when the property has been painted a second coat is required, it takes the guess work out as far as the overall budget with regards to labor.
- 2.) On older properties, especially with regards to exterior projects, oftentimes certain defects emerge which do not fall under the category of industry standards for a recoat. These include, **caulking and waterproofing of areas vulnerable to rot and moisture accumulation. The application of special products which arrest the spread of pre-existing rot, until tile or wood replacement can take place. With a custom package if drywall, or exterior repairs are necessary. Once the other contractor has actuated the improvements, prime cut paint will return and apply the necessary finish coat free of charge, barring any additional material costs.**
- 3.) Multiple colors are more trouble than most customers understand, under the production package it allows two base colors, one for walls, one for trim, with a surcharge for every additional color and every additional coat, it adds up. **With a custom package it takes the guess work out of interiors requiring multiple different colors, as well as custom trim such as chair rail, crown molding, fireplace hearths, bay windows etc.**

Thank you for enquiring about the advantages of a custom package with regards to your upcoming project.

Prime Cut Paint Work Detail Agreement

Client/Agent Lee MAGY

The aforementioned agrees to the following work detail agreement which in conjunction with the attached terms and conditions shall constitute the covenant for this and all future projects in entirety. The terms shall serve as transferable to all future projects unless duly stipulated,

Work Shall commence on 4-19-19 note:And to be performed at 3716 NORTHMOOR COURT VA BEACH

Work Schedule

1. PAINT INTERIOR ENTIRE HOUSE WALLS EXCEPT EAST DEN + CLOSETS
2. CARPET IS BEING REMOVED NO CEILINGS
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Material schedule

1. GUEST BATHROOM 204V 69-120 DASH TRUCK
2. MASTER BEDROOM PEARL GRAY (0129485)
3. BODY HOUSE SILVER PLATE
4. BENEATH CHAIR RAIL 1/4 LIGHTER
- 5.
- 6.
- 7.

8.

Labor costs for this project shall be 650 with 200.00 to be paid in advance for security. The remainder to be paid in conjunction with attached terms and conditions.

Materials to be provided by contractor and reimbursed by client agent, yes

Materials to be provided by client/ agent NO

Production package ☒ Custom Package ☐

Contractor AGG. ROS

Client/Agent [Signature]

Prime Cut Paint Work Detail Agreement

Client/Agent W.F MAGANN

The aforementioned agrees to the following work detail agreement which in conjunction with the attached terms and conditions shall constitute the covenant for this and all future projects in entirety. The terms shall serve as transferable to all future projects unless duly stipulated,

Work Shall commence on 9/12/18 note:

And to be performed at 3403 BROADWAY ST. PORTSMOUTH

Work Schedule

1. INTERIOR WALLS, TRIM,
2. NO PORCH - ADDITION, NO UTILITY ROOM,
3. FLOOR, RECEPTICLES REPLACED -
4. I WILL MOVE APPLIANCES
5. REMOVE RUBBISH
- 6.
- 7.
- 8.
- 9.
- 10.

Material schedule

1. PPG ULTRACOLOR 150. - FIAF
2. WHITE CEILINGS BEIGE WALLS
3. SMILINGROSS TRIM.
- 4.
- 5.
- 6.
- 7.

8.

Labor costs for this project shall be 750.00 with 678 to be paid in advance for security. The remainder to be paid in conjunction with attached terms and conditions.

Materials to be provided by contractor and reimbursed by client agent, YES

Materials to be provided by client/ agent NO

Production package ☒ Custom Package ☐

Contractor 7/4/2

Client/Agent Ken F

Property Detail Report

For Property Located At :

114 S BROAD ST, SUFFOLK, VA 23434-5713



RealQuest

Owner Information

Owner Name: GILLIS DANIEL JACK/GILLIS GINA D
 Mailing Address: 114 S BROAD ST, SUFFOLK VA 23434-5713 C001
 Vesting Codes: //

Location Information

Legal Description:	LS 9A,10,BL A 114 S BROAD ST		
County:	SUFFOLK CITY, VA	APN:	353185000
Census Tract / Block:	653.00 / 2	Alternate APN:	34G16(6)A*9A*10
Township-Range-Sect:		Subdivision:	WEST END / LAKESIDE
Legal Book/Page:		Map Reference:	5163-E7 /
Legal Lot:	9A	Tract #:	
Legal Block:	A	School District:	5103710
Market Area:		School District Name:	SUFFOLK CITY PS
Neighbor Code:	SU	Munic/Township:	

Owner Transfer Information

Recording/Sale Date: /
 Sale Price:
 Document #:
 Deed Type:
 1st Mtg Document #:

Last Market Sale Information

Recording/Sale Date:	10/05/2017 / 09/27/2017	1st Mtg Amount/Type:	/
Sale Price:	\$150,000	1st Mtg Int. Rate/Type:	/
Sale Type:		1st Mtg Document #:	/
Document #:	11333	2nd Mtg Amount/Type:	/
Deed Type:	WARRANTY DEED	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	\$39.32
New Construction:		Multi/Split Sale:	

Title Company:

Lender:

Seller Name: TAYLOR CONNIE N

Prior Sale Information

Prior Rec/Sale Date:	/	Prior Lender:	/
Prior Sale Price:		Prior 1st Mtg Amt/Type:	/
Prior Doc Number:		Prior 1st Mtg Rate/Type:	/
Prior Deed Type:			

Property Characteristics

Gross Area:	3,815	Parking Type:	GARAGE	Construction:	
Living Area:	3,815	Garage Area:	858	Heat Type:	RADIANT
Tot Adj Area:		Garage Capacity:		Exterior wall:	WOOD SIDING
Above Grade:		Parking Spaces:		Porch Type:	COVERED SLAB
Total Rooms:		Basement Area:		Patio Type:	
Bedrooms:	4	Finish Bsmnt Area:		Pool:	
Bath(F/H):	2 / 1	Basement Type:		Air Cond:	
Year Built / Eff:	1906 /	Roof Type:	HIP	Style:	
Fireplace:	Y /	Foundation:		Quality:	
# of Stories:	2	Roof Material:	OTHER	Condition:	
Other Improvements:	Building Permit				

Site Information

Zoning:		Acres:	0.26	County Use:	SINGLE FAMILY RES
Lot Area:	11,326	Lot Width/Depth:	65 x 174	State Use:	URBAN (0001)
Land Use:	SFR	Res/Comm Units:	/	Water Type:	
Site Influence:				Sewer Type:	

Tax Information

Total Value:	\$209,000	Assessed Year:	2018	Property Tax:	\$2,319.90
Land Value:	\$49,100	Improved %:	77%	Tax Area:	
Improvement Value:	\$159,900	Tax Year:	2018	Tax Exemption:	
Total Taxable Value:					

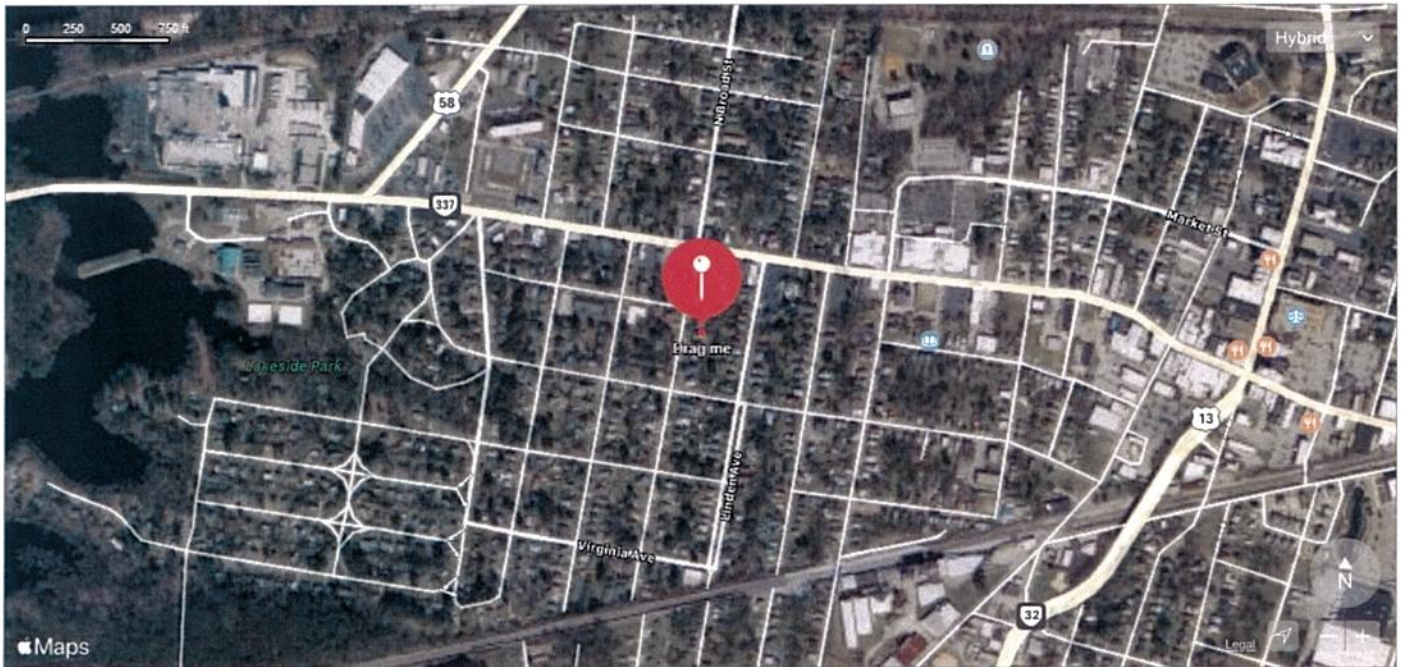
Home » Latitude and Longitude of a Point

To find the latitude and longitude of a point you can do any of the following...



1. **Press and Hold the Shift Key then Click** on the point on the map.
2. **Drag** the red marker (Press and Hold the mouse button until the marker pops up) .
3. Enter the **Address** 114 S. Broad St., Suffolk, VA 23434 **GO**

Latitude and Longitude of a Point



Clear / Reset Remove Last Blue Marker
Center Red Marker

Get the Latitude and Longitude of a Point

When you click on the map, move the marker or enter an address the latitude and longitude coordinates of the point are inserted in the boxes below.

Latitude: 36.728766
Longitude: -76.593340

	Degrees	Minutes	Seconds
Latitude:	36	43	43.5576
Longitude:	-76	35	36.0234

Show Point from Latitude and Longitude

Use this if you know the latitude and longitude coordinates of a point and want to see where on the map the point is.

Use: + for N Lat or E Long - for S Lat or W Long.

Example: +40.689060 -74.044636

Note: Your entry should not have any embedded spaces.

Decimal Deg. Latitude:

Decimal Deg. Longitude:

Show Point

Example: **+34 40 50.12** for 34N 40' 50.12"

Degrees Minutes Seconds

Latitude:

Longitude:

Show Point

Property Detail Report

For Property Located At :

238 MT VERNON AVE, PORTSMOUTH, VA 23707-1623



RealQuest

Owner Information

Owner Name: MOORE VONKETRICK
Mailing Address: 238 MT VERNON AVE, PORTSMOUTH VA 23707-1623 C023
Vesting Codes: //

Location Information

Legal Description:	942 238 MT VERNON	APN:	0142-0460
County:	PORTSMOUTH CITY, VA	Alternate APN:	
Census Tract / Block:	2102.00 / 1	Subdivision:	PORT NORFOLK
Township-Range-Sect:		Map Reference:	0142 /
Legal Book/Page:	1-9	Tract #:	
Legal Lot:	942	School District:	5103000
Legal Block:		School District Name:	PORTSMOUTH CITY PS
Market Area:		Munic/Township:	
Neighbor Code:	13		

Owner Transfer Information

Recording/Sale Date:	/	Deed Type:	
Sale Price:		1st Mtg Document #:	
Document #:			

Last Market Sale Information

Recording/Sale Date:	04/05/2019 / 04/02/2019	1st Mtg Amount/Type:	\$168,547 / VA
Sale Price:	\$165,000	1st Mtg Int. Rate/Type:	/
Sale Type:		1st Mtg Document #:	3288
Document #:	3287	2nd Mtg Amount/Type:	/
Deed Type:	BARGAIN & SALE DEED	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	\$93.91
New Construction:		Multi/Split Sale:	
Title Company:	TITLE ALLIANCE GREENBRIER LLC		
Lender:	OVM FIN'L INC		
Seller Name:	ANSELL CHERYL D		

Prior Sale Information

Prior Rec/Sale Date:	08/03/2012 / 12/31/2011	Prior Lender:	/
Prior Sale Price:	\$225,028	Prior 1st Mtg Amt/Type:	/
Prior Doc Number:	8083	Prior 1st Mtg Rate/Type:	/
Prior Deed Type:	DEED (REG)		

Property Characteristics

Gross Area:	1,757	Parking Type:		Construction:	
Living Area:	1,757	Garage Area:		Heat Type:	HOT AIR
Tot Adj Area:		Garage Capacity:		Exterior wall:	FRAME
Above Grade:		Parking Spaces:		Porch Type:	
Total Rooms:	6	Basement Area:		Patio Type:	
Bedrooms:		Finish Bsmnt Area:		Pool:	
Bath(F/H):	2 /	Basement Type:		Air Cond:	YES
Year Built / Eff:	1910 /	Roof Type:		Style:	TRADITIONAL
Fireplace:	Y / 1	Foundation:		Quality:	
# of Stories:	2	Roof Material:	SLATE	Condition:	
Other Improvements:	Building Permit				

Site Information

Zoning:	HR	Acres:	0.13	County Use:	RES DTRADITIONAL (AB81)
Lot Area:	5,663	Lot Width/Depth:	40 x 140	State Use:	
Land Use:	SFR	Res/Comm Units:	/	Water Type:	
Site Influence:				Sewer Type:	

Tax Information

Total Value:	\$166,530	Assessed Year:	2019	Property Tax:	\$2,208.57
Land Value:	\$52,170	Improved %:	69%	Tax Area:	
Improvement Value:	\$114,360	Tax Year:	2018	Tax Exemption:	
Total Taxable Value:					

Home » Latitude and Longitude of a Point



3 Easy Steps to Get
Maps and Directions

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- 2 Continue on our website
- 3 Get OnlineMapFinder

To find the latitude and longitude of a point you can do any of the following...



1. **Press and Hold the Shift Key** then **Click** on the point on the map.
2. **Drag** the red marker (Press and Hold the mouse button until the marker pops up) .
3. Enter the **Address** 238 Mount Vernon Ave., Portsmouth, VA 2 GO

Latitude and Longitude of a Point

0 200 400 700 ft



Clear / Reset Remove Last Blue Marker
Center Red Marker

Get the Latitude and Longitude of a Point

When you click on the map, move the marker or enter an address the latitude and longitude coordinates of the point are inserted in the boxes below.

Latitude: 36.850681
Longitude: -76.337212

	Degrees	Minutes	Seconds
Latitude:	36	51	2.4516
Longitude:	-76	20	13.9626

Show Point from Latitude and Longitude

Use this if you know the latitude and longitude coordinates of a point and want to see where on the map the point is.

Use: + for N Lat or E Long - for S Lat or W Long.

Example: +40.689060 -74.044636

Note: Your entry should not have any embedded spaces.

Decimal Deg. Latitude:

Decimal Deg. Longitude:

Show Point

Example: **+34 40 50.12** for 34N 40' 50.12"

	Degrees	Minutes	Seconds
--	---------	---------	---------

Latitude:

Longitude:

Show Point

Property Detail Report

For Property Located At :

3716 NORTHMOOR CT, VIRGINIA BEACH, VA 23452-3524



RealQuest

Owner Information

Owner Name: ZIMMERMAN QUINN
Mailing Address: 2529 BEAUFORT AVE, VIRGINIA BEACH VA 23455-1355 C047
Vesting Codes: / A /

Location Information

Legal Description:	BIRCHWOOD SOUTH BK C LOT 20		
County:	VIRGINIA BEACH CITY, VA	APN:	148-746-50580-000
Census Tract / Block:	424.00 / 3	Alternate APN:	
Township-Range-Sect:	00-00-09	Subdivision:	BIRCHWOOD BIRCHWOOD SOUTH
Legal Book/Page:		Map Reference:	/
Legal Lot:	20	Tract #:	
Legal Block:		School District:	5103840
Market Area:		School District Name:	VIRGINIA BEACH CITY PS
Neighbor Code:	5112004	Munic/Township:	LYNNHAVEN

Owner Transfer Information

Recording/Sale Date:	/	Deed Type:	
Sale Price:		1st Mtg Document #:	
Document #:			

Last Market Sale Information

Recording/Sale Date:	02/27/2001 / 02/26/2001	1st Mtg Amount/Type:	\$106,300 / CONV
Sale Price:	\$132,900	1st Mtg Int. Rate/Type:	/
Sale Type:		1st Mtg Document #:	4364-1691
Document #:	4364-1689	2nd Mtg Amount/Type:	/
Deed Type:	DEED (REG)	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	\$94.26
New Construction:		Multi/Split Sale:	

Title Company:

Lender:

Seller Name:

WACHOVIA BK
STOCKHOWE CHRISTOPHER W

Prior Sale Information

Prior Rec/Sale Date:	/	Prior Lender:	
Prior Sale Price:		Prior 1st Mtg Amt/Type:	/
Prior Doc Number:		Prior 1st Mtg Rate/Type:	/
Prior Deed Type:			

Property Characteristics

Gross Area:	1,696	Parking Type:	ATTACHED GARAGE	Construction:	WOOD
Living Area:	1,410	Garage Area:	286	Heat Type:	FORCED AIR
Tot Adj Area:		Garage Capacity:		Exterior wall:	BRICK
Above Grade:	1,410	Parking Spaces:		Porch Type:	
Total Rooms:	7	Basement Area:		Patio Type:	DECK
Bedrooms:	3	Finish Bsmnt Area:		Pool:	
Bath(F/H):	2 /	Basement Type:		Air Cond:	CENTRAL
Year Built / Eff:	1976 /	Roof Type:	GABLE	Style:	
Fireplace:	Y / 1	Foundation:	SLAB	Quality:	
# of Stories:	1	Roof Material:	COMPOSITION SHINGLE	Condition:	AVERAGE

Other Improvements: Building Permit

Site Information

Zoning:	R75	Acres:	0.34	County Use:	RESIDENCE (101)
Lot Area:	14,944	Lot Width/Depth:	x	State Use:	
Land Use:	SFR	Res/Comm Units:	/	Water Type:	TYPE UNKNOWN
Site Influence:				Sewer Type:	TYPE UNKNOWN

Tax Information

Total Value:	\$223,100	Assessed Year:	2019	Property Tax:	\$2,236.58
Land Value:	\$90,000	Improved %:	60%	Tax Area:	50
Improvement Value:	\$133,100	Tax Year:	2018	Tax Exemption:	
Total Taxable Value:	\$223,100				

Home » Latitude and Longitude of a Point



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1. **Press and Hold the Shift Key** then **Click** on the point on the map.
2. **Drag** the red marker (Press and Hold the mouse button until the marker pops up) .
3. Enter the **Address** 3716 Northmoor Court, Virginia Beach, VA **GO**

Latitude and Longitude of a Point

0 250 500 750 ft



Clear / Reset Remove Last Blue Marker
Center Red Marker

Get the Latitude and Longitude of a Point

When you click on the map, move the marker or enter an address the latitude and longitude coordinates of the point are inserted in the boxes below.

Latitude: 36.845148
Longitude: -76.101940

	Degrees	Minutes	Seconds
Latitude:	36	50	42.5328
Longitude:	-76	6	6.9834

Show Point from Latitude and Longitude

Use this if you know the latitude and longitude coordinates of a point and want to see where on the map the point is.

Use: + for N Lat or E Long - for S Lat or W Long.

Example: +40.689060 -74.044636

Note: Your entry should not have any embedded spaces.

Decimal Deg. Latitude:

Decimal Deg. Longitude:

Show Point

Example: **+34 40 50.12** for **34N 40' 50.12"**

	Degrees	Minutes	Seconds
--	---------	---------	---------

Latitude:

Longitude:

Show Point

Property Detail Report

For Property Located At :

3403 BROADWAY ST, PORTSMOUTH, VA 23703-2411



RealQuest

Owner Information

Owner Name: W F MCGANN CORP
Mailing Address: 3220 MARINER AVE, PORTSMOUTH VA 23703-2420 C003
Vesting Codes: //

Location Information

Legal Description:	LTS 312-314 PT 316-318 400 PT ALLEY		
County:	PORTSMOUTH CITY, VA	APN:	0702-0110
Census Tract / Block:	2130.01 / 3	Alternate APN:	
Township-Range-Sect:		Subdivision:	WEST NORFOLK
Legal Book/Page:	4-79	Map Reference:	0702 /
Legal Lot:	312	Tract #:	
Legal Block:		School District:	5103000
Market Area:		School District Name:	PORTSMOUTH CITY PS
Neighbor Code:	36	Munic/Township:	

Owner Transfer Information

Recording/Sale Date:	/	Deed Type:	
Sale Price:		1st Mtg Document #:	
Document #:			

Last Market Sale Information

Recording/Sale Date:	04/21/2005 / 04/04/2005	1st Mtg Amount/Type:	/
Sale Price:	\$135,000	1st Mtg Int. Rate/Type:	/
Sale Type:		1st Mtg Document #:	/
Document #:	7852	2nd Mtg Amount/Type:	/
Deed Type:	BARGAIN & SALE DEED	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	\$146.10
New Construction:		Multi/Split Sale:	

Title Company:
Lender:
Seller Name: CRODICK WILLIAM J III

Prior Sale Information

Prior Rec/Sale Date:	/	Prior Lender:	
Prior Sale Price:		Prior 1st Mtg Amt/Type:	/
Prior Doc Number:		Prior 1st Mtg Rate/Type:	/
Prior Deed Type:			

Property Characteristics

Gross Area:	924	Parking Type:		Construction:	
Living Area:	924	Garage Area:		Heat Type:	HOT AIR
Tot Adj Area:		Garage Capacity:		Exterior wall:	FRAME
Above Grade:		Parking Spaces:		Porch Type:	
Total Rooms:	5	Basement Area:		Patio Type:	
Bedrooms:		Finish Bsmnt Area:		Pool:	
Bath(F/H):	1 /	Basement Type:		Air Cond:	YES
Year Built / Eff:	1955 /	Roof Type:		Style:	RANCH
Fireplace:	/	Foundation:		Quality:	
# of Stories:	1	Roof Material:	ASBESTOS	Condition:	
Other Improvements:	Building Permit				

Site Information

Zoning:	IL	Acres:	0.26	County Use:	RESDREG. RANCH (AB77)
Lot Area:	11,108	Lot Width/Depth:	x	State Use:	
Land Use:	SFR	Res/Comm Units:	/	Water Type:	
Site Influence:				Sewer Type:	

Tax Information

Total Value:	\$76,660	Assessed Year:	2019	Property Tax:	\$996.58
Land Value:	\$28,030	Improved %:	63%	Tax Area:	
Improvement Value:	\$48,630	Tax Year:	2018	Tax Exemption:	
Total Taxable Value:					

Home » Latitude and Longitude of a Point



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1. **Press and Hold the Shift Key then Click** on the point on the map.
2. **Drag** the red marker (Press and Hold the mouse button until the marker pops up) .
3. Enter the **Address** 3403 Broadway St. Portsmouth VA 23703 **GO**

Latitude and Longitude of a Point

0 200 400 700 ft



Clear / Reset Remove Last Blue Marker
Center Red Marker

Get the Latitude and Longitude of a Point

When you click on the map, move the marker or enter an address the latitude and longitude coordinates of the point are inserted in the boxes below.

Latitude: 36.861835
Longitude: -76.347305

	Degrees	Minutes	Seconds
Latitude:	36	51	42.6054
Longitude:	-76	20	50.298

Show Point from Latitude and Longitude

Use this if you know the latitude and longitude coordinates of a point and want to see where on the map the point is.

Use: + for N Lat or E Long - for S Lat or W Long.

Example: +40.689060 -74.044636

Note: Your entry should not have any embedded spaces.

Decimal Deg. Latitude:

Decimal Deg. Longitude:

Show Point

Example: **+34 40 50.12** for **34N 40' 50.12"**

Degrees Minutes Seconds

Latitude:

Longitude:

Show Point



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

UPS TRACKING #: 1ZA4216Y0197972633

Date: August 26, 2019

Robert Lauter
Prime Cut Paint
1414 Baychester Avenue
Norfolk, VA 23503

**RE: Section 402(c) Renovation, Repair, and Painting Rule Compliance Inspection under
Section 409 of the Toxic Substances Control Act (TSCA)**

Dear Mr. Lauter:

This is to provide notice that Mr. Paul J. Ruge Jr. will visit your office, located at 1414 Baychester Avenue, Norfolk, VA 23503 **on Wednesday, September 4, 2019 at 9:00 AM** to conduct a Renovation, Repair, and Painting (RRP) Rule inspection. Mr. Ruge is designated by the EPA administrator to conduct inspections under Section 409 of the Toxic Substance Control Act (TSCA). Mr. Ruge will ask you some questions and collect a random sample of your contracts. To save time during the inspection, **please have available for review and collection** by the inspector, the following documents from August 1, 2018 to the present being sure to include any and all documents for the work performed at 114 S. Broad Street, Suffolk, VA 23434:

1. **A list of all jobs your firm started and/or completed during the last 12 months.** The list should include the date of the contract, the address where the work was performed, and the date the property was built;
2. **A list of all residential properties or child occupied facilities built before 1978 where renovation, remodeling, or other work which disturbed more than 6 square feet of paint for interior renovations or more than 20 square feet of paint for exterior renovations was conducted by you or employees of your company. Please also identify all properties on the list for which window replacement and/or demolition was performed, regardless of the square feet of painted surface that was disturbed.** You may identify these properties on the same list you provide for #1 above. For these properties, also provide a brief description of the scope of work, and if known, the number and ages of any children that resided at the property. Activities which *disturb* painted surface may include but are not limited to: sanding, scraping, water-blasting, power-washing, removal/cut-outs, demolition, etc.;
3. **All contracts for renovations designated in #2 above, including any attachments, contract modifications/addendums, receipts, photographs, permits, and RRP documentation,**



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

including but not limited to: receipts of acknowledgment for the pre-renovation notification informational pamphlet, lead testing documentation, training records, work-practices checklists, etc.

Note: If a detailed description of the scope of work is *not* already included in the contract, or *no* written contracts for your jobs exist, **prepare a detailed written description (form enclosed) of the scope of work in advance of the inspection or be prepared to describe the scope of work during the inspection.** The description should include the total square feet of painted surfaces disturbed;

4. **Copies of your current (and if applicable, your expired) EPA Lead Firm certificates;**
5. **A list of all employees that work for your company and copies of current (and if applicable, your expired) RRP Renovator certificates for all employees who performed work for your firm AND “on the job” training records for workers who performed work for your firm and were trained in lead safe work practices by an RRP Certified Renovator;**
6. **A list of any subcontractors you hire, and:**
 - a. Copies of each subcontractor’s EPA firm certification (current and expired);
 - b. Copies of each RRP Renovator’s certifications for the subcontractors’ employees;
 - c. Copies of contracts/invoices between your firm and the subcontractor for renovations on pre-1978 properties (Inspector Ruge may randomly select some contracts for review).

To confirm the time and location of the inspection, or should you have any questions, please call Inspector Ruge at 410-305-2683 or email at ruge.paul@epa.gov. For more information go to epa.gov/lead.

Sincerely,



Paul J. Ruge Jr.

U.S. Environmental Protection Agency
Land and Chemicals Division
Toxics Program Branch
EPA Environmental Science Center
701 Mapes Road
Fort Meade, MD 20755
Phone: (410) 305-2683
ruge.paul@epa.gov

PARTIES ENTERING THE CONTRACT:
YOU/YOUR FIRM:

CONTRACT DATE: _____
ADDRESS WHERE WORK WAS PERFORMED: _____

START DATE: _____
END DATE: _____

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

COMPENSATION RECEIVED FOR PERFORMING JOB: _____

INTERIOR: _____ sq. ft. EXTERIOR: _____ sq. ft.

WINDOWS REPLACED? Yes / No (circle one) If Yes, how many? _____

YOUR NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

Foley, Patrick-J (he/him/his)

From: Lauter Robert <primecutpaint@gmail.com>
Sent: Tuesday, August 27, 2019 8:54 PM
To: Ruge, Paul
Subject: Re: 114 S. Broad St. Suffolk paint job

Confirmed, thank you. Sounds good September fifth 9:00 am Rob www.primecutpaint.com

On Tue, Aug 27, 2019 at 2:20 PM Ruge, Paul <Ruge.Paul@epa.gov> wrote:

Dear Mr. Lauter,

Thank you for talking with me today. As agreed on the phone, I would like to change the **date of the inspection to Thursday, September 5, 2019**. The time will remain the same at 9:00 AM and the location will remain the same at 1414 Baychester Avenue, Norfolk 23503.

Thank you for your consideration.

Sincerely,

Paul J. Ruge Jr.

SEE Lead Inspector

U.S. Environmental Protection Agency

Land and Chemicals Division

Toxics Program Branch

EPA Environmental Science Center

701 Mapes Road

Fort Meade, MD 20755

Phone: (410) 305-2683

Fax: (410) 305-3093 (please use cover sheet)

Ruge.paul@epa.gov

From: Lauter Robert <primecutpaint@gmail.com>

Sent: Tuesday, August 27, 2019 1:17 PM

To: Ruge, Paul <Ruge.Paul@epa.gov>

Subject: Fwd: 114 S. Broad St. Suffolk paint job

Confirmation of September 14th, 2019 RRP rule inspection and attached email of last correspondence with complaining party

----- Forwarded message -----

From: **Lauter Robert** <primecutpaint@gmail.com>

Date: Wed, Aug 21, 2019 at 5:17 PM

Subject: Re: 114 S. Broad St. Suffolk paint job

To: Gina Gillis <ggillismail@gmail.com>

Greetings. This email will confirm that at approximately 11:15 am this morning I arrived at your home in compliance with your expressed directions sent via this email thread less than 12 hours prior at which time I left paper work and began to collect my equipment, as I was in the process of loading my truck you summoned law enforcement citing threats of a physical nature. I provided the officer with not only a copy of the contract, but of the email directing me onto the property, and requested her card which she provided as well as consented to provide an affidavit if I required. Regarding lead certification neither federal nor commonwealth law requires certification for PRE work, however the pamphlet entitled "Protect Your Family from Lead in Your Home" was affixed to my copy of the contract which your husband signed. I keep it because I am required to do so for three years from execution of service, I am not required to surrender a copy to you, furthermore a copy was provided (or should have been pursuant to federal law) by the city of Suffolk when you received your certificate of appropriateness and work permit, you can google the name if you want your own copy. Lead certification is for abatement as defined by the uniform building code as being "15% or greater dyshesion of coatings" My Disclaimer clearly states "Abatement is not a function of Prime Cut Paint." Moving forward, it is my position that you and your husband are in fundamental breach of contract and that your actions today in conjunction with the erratic and even contradictory emails, which bounce back and forth between demanding I "scrape" to wanting lead certifications, indicate that this breach is malicious and hence actionable on levels above and beyond the normal disagreements over money that arise from time to time. Hence given the totality of the circumstances I find it prudent at this time to inform you of the following.

1.) The terms signed allow me to injunct the property in question "While litigation is going on." The title will be encumbered until all appeals are settled at which time if the court awards me damages I can then transition into a Mechanic's lien, permanently encumbering the property. Since neither you nor your husband show any evidence of being gainfully employed, thus garnishing your wages is impossible, once the lien is actuated I can propose a bill of unlawful detainer to have you removed from the premises, if it pleases the court to grant the request.

2.) Since there will be two matters before the court, the injunction on title of real property worth in excess of 25,000.00 and the warrant in debt which is worth less, the circuit court enjoys consecutive jurisdiction over both matters thus any

action will be filed at the circuit court level, not small claims. Though I am under no compulsion to inform you of your rights, I will anyway, you do have a right to a jury. If full payment of the materials (using check, money order or debit card) has not been paid by September 5th 2009, in conjunction with the previously issued 10 day notice of intent, I will bring suite against you in circuit court for the outstanding balance, plus 25% late fee and 15% delinquent fee outlined in Article 10. Whether or not I decide to seek additional money damages for malicious infliction of mental anguish based upon your abhorrent behavior today, will depend entirely on how you respond moving forward. By the way you misspelled Cordially, in your last email.

Good day to you mam

Rob Lauter

www.primecutpaint.com

On Tue, Aug 20, 2019 at 11:20 PM Gina Gillis <ggillismail@gmail.com> wrote:

You may pickup your equipment at 11:30AM tomorrow, Wed. 8/21 All loose equipment has been collected and stored on the north side of the home. You are authorized to enter my property only to claim your property. leave all paperwork etc. on the top step of the porch as i will need time to review these documents before any consideration of payment.

Cordially,

Mr. Gillis

On Tue, Aug 20, 2019 at 8:33 PM Gina Gillis <ggillismail@gmail.com> wrote:

Rob, send a copy of your firms Lead Certification. i need this.

On Tue, Aug 20, 2019 at 8:01 PM Lauter Robert <primecutpaint@gmail.com> wrote:

Greetings, This email will confirm that I received a voicemail from your husband today a 2:24 pm expressing your desire to terminate the contract, technically this is not an option however I will not lean on the legality of the contract if it is truly your desire to search elsewhere.. As I expressed on his voicemail, the deposit on labor is adequate for services already rendered, I have run off copies of your material invoices and will deliver them along with a weather log indicating a consistent pattern of weather issues including today and every work day with the exception of Saturday the 17th which I have a contract that dates back to August 1st to mobilize on another job including the last day I threw caution to the wind and worked on your job on August 13th after being demobilized on August 7th (well after another client had already arranged for me to mobilize). Please be advised, I will be on site tomorrow to collect my equipment, and bring you the paperwork your husband requires, however if the balance on materials is not settled, pursuant to article 10 of the legal instrument you signed I am entitled to 25% of the contract amount. I asked your husband on voicemail to contact me tonight, it has not happened, I had asked

you to mail the check for materials on the 16th, that has not happened, if you are not available tomorrow when I arrive to demobilize for the final time to reimburse me for the pecuniary costs of your project, this email shall serve as a 10 day notice of intent, required under Virginia law, to seek damages and enforce the contract in it's entirety. As I expressed to your husband earlier, sorry we could not make it happen. Please make the payment in check, money order or digital form of payment, as I expressed to your husband cash payments I accept at the contract phase as the contract itself is a receipt.

Cordially,

Rob Lauter

www.primecutpaint.com

On Sat, Aug 17, 2019 at 6:46 PM Lauter Robert <primecutpaint@gmail.com> wrote:

Greetings. On Wednesday the 7th, I arrived at 8:30 Am unloaded both of my sprayers and my truck as well as my shield to begin spraying, I also removed the furniture from the porch, you intimated that you wished to continue some prep work that is beyond the scope of the work order on the agreement, specifically on the hand rails. I accommodated you thinking it would be a day maybe two, this thread will confirm that after waiting 4 days I contacted you on Monday august 12th first thing in the morning to check the status, and was called later that afternoon and given the go ahead to re-mobilize. I did what I could and just as I predicted the weather has now become a factor and I came home to your scathing email. While I'm sensitive to the fact that you want special attention paid to the veranda, the fact of the matter is, it is top down process. I begin at the high areas for a number of reasons. First I have a tall ladder that weighs 250 lbs and it needs to be utilized as quickly as possible to be available for other projects, secondly hornets and spiders tend to begin rebuilding in hard to reach areas more quickly, thirdly higher areas receive less scrutiny and take more time to execute. The reason you want to spray as quickly as possible (once the majority of prep is done) is so we can figure out how much paint your project will actually require. As I explained, when I go up to spray, I bring a five in one and a spray can of primer to spot prime any areas I might have missed the first time, and then apply the final coat while up on the ladder to economize motion. The custom job allows you finals (once the work has been completed and you have been billed, it covers waterproofing, caulking things of this nature, I said I would apply ready patch on holes which it is designed for, I cannot refinish every area that has been scraped and to answer the question you asked earlier in a text I am aware of no product, that completely levels off every area that has been scraped. The aesthetics of a paint job are ancillary to its primary function which is to protect the property. With all due respect, I cannot justify bringing helpers out to walk around areas that you are looking at, when areas 25 and 30 feet in the air have yet to be coated. The overspray is irrelevant because it has to be cut in anyway. With regards to the overspray on glass, it has nothing to do with speed, it has to do with proximity, and can easily be addressed, I did not have my shield with me when I showed up on the 12th, which once more goes to demobilization as is outlined in the terms. With regards to any columns or trim that was missed while spraying, if their are access issues such as the corner columns on the veranda on the north side, the bushes will need to be cut back, any other areas can be touched up (once the project reaches the final stage). With regards to the weather, I cannot drive out on a gamble, if the forecast calls for storms or wind in excess of 15 mph, while spraying (I must defer to the experts) Which is why once again you want to spray as much as you can, as quickly as you can to avoid weather delays such as we are experiencing now. The fine tuning, removing over spray, scraping here and their, touching up missed things, can be done under threat of storms reasonably, with a step ladder and hand tools at the END of the job. Not 100 feet of ladder and sprayers sitting on a job waiting to be used, to address smaller issues on the ground level before moving

on. Hopefully your concerns have been addressed. As of now it looks like I won't be able to get out there until Wednesday and Thursday to complete spraying the trim and begin on the walls, if the weather pattern changes I will be out sooner.

Cordially,

Rob

www.primecutpaint.com

On Fri, Aug 16, 2019 at 5:53 PM Gina Gillis <ggillismail@gmail.com> wrote:

Rob,

We didn't ask you to demobilize and it definitely wasn't a prolonged time you were away, we just asked you to scrape off the loose paint and prep it good before painting. You also asked us to find the areas that needed attention and we did so.

You could have stayed and scraped and prepped and could still be over here prepping but you just wanted to spray and that can't happen until it is prepped correctly.

There are areas that you sprayed over top of loose hanging paint, half of some columns and rails got missed with paint and there's enough over spray to choke a horse. We just want you to realize this is are home and want a professional job done.

We need you to slow down and re focus on the prep please. We have told you we are not in a rush and that's why we opted for the more expensive custom job to have it done right.

I understand you don't want to bring your helpers over because you can't trust them, but that means it is going to be a longer time for you to get this done alone. We'd like to see the prep completed and then the paint done.

You said you'd go back over the whole house to make sure its all been scraped good...you could be doing that, or finishing sanding the roof, or fixing the railings that have drips and scrapings, cobwebs, dust stuck in the paint etc. The spots that are being scraped and primed are not getting filled or feathered in, they are going to look bad when painted.

What can we do to make sure that doesn't happen? We were helping out on the porch because we didn't think you were going to prep it to the level we wanted to see but we can't keep up all that work. We are both beat.

So please going forward, let's work together to make sure our home is completed like you would want your home to look like.

See you soon,

Dan Gillis

On Fri, Aug 16, 2019, 6:23 AM Lauter Robert <primecutpaint@gmail.com> wrote:

Gina I am attaching the forecast which they have altered again here

<https://weather.com/weather/tenday//fa047069f500d6dc437760e9b2572599df1c86f4ef7857eea3e0314bbce3567a>

As you can see not looking very promising, which is always the risk you take when demobilizing especially for such a prolonged period of time. It's now looking like Wednesday before I am able to get any sort of progress done on the project, what are the chances of you mailing the check for the materials?

Cordially,

Rob

www.primecutpaint.com

On Tue, Aug 13, 2019 at 5:44 PM Lauter Robert <primecutpaint@gmail.com> wrote:

Here is the invoice for the materials. The reason I didn't want to stop to begin with, is that I had already taken two weeks to scrape, prime and caulk, from when I pressure washed, in the time since I demobilized I saw new cob webs and a hornets nest had been built since the last time I left. Obviously the hand rails have been both primed and painted to the extent the chemicals you were using on them may or may not play a role remains to be seen, in any event I'm sure its nothing that can't be corrected. Overspray occurs and can be removed with a razor from glass surfaces, and a wire brush or grinder from concrete. I asked Mr. Gillis to remove all items from the work area that yaw were worried about and he intimated only the rocking chairs were an issue. I removed them, your fan and your vacuum cleaner myself this morning, but will ask that anything you're worried about be kept away from the house for the next 3-4 days. Drips can be scraped sanded etc, I have attached a punch list you can fill out but I would wait until I bill you to begin filling it out otherwise you will just write things down that have already been corrected. please read the instructions on the punch list before you fill it out.

Cordially,

Rob

www.primecutpaint.com

On Tue, Aug 13, 2019 at 4:23 PM Gina Gillis <ggillismail@gmail.com> wrote:

Hey Rob,

Just went outside and saw the porch rails were painted. Is that the primer? Looks scary. I see places where its been painted overtop of large pieces of dirt particles, cobwebs and it doesnt look like you vacuumed the dust and loose particles off before painting. Theres lots of drips and missed spots. Im very concerned as we spent alot of time scraping and sanding those so they'd look better. Whats the plan? I am super nervous. Also, is that gonna come off of our flower pots, bushes, concrete, windows, scaffold, ladder, etc? Please take your time and let me know what we need to do to make this look good. I am depending on you, the pro painter.

Thanks,

Gina

On Mon, Aug 12, 2019, 6:56 AM Lauter Robert <primecutpaint@gmail.com> wrote:

Greetings, I was just wondering when I am going to be able to re-mobilize, are the handrails done? I kind of need to know because I'm going to need the tall ladder on another job beginning the 20th, the other ones are fine. so I need to get those two third story pediments and hopefully all the spraying done this week, except for the porch roof and deck. then all I have is hand work.

Cordially,

Rob

www.primecutpaint.com

On Wed, Jul 10, 2019 at 6:35 PM Lauter Robert <primecutpaint@gmail.com> wrote:

Dan thanks so much, here's the stuff, my license info and the contract along with info on the warranty custom option, most of the legal mumbo jumbo is for brokers or builders, but for home owners articles 8,10 and the disclaimer is the important stuff. The work order is blank, we fill that out together if you decide to use me. I also added some photos of a project similar to yours I just completed. Thanks again.

Cordially,

Rob

www.primecutpaint.com

On Wed, Jul 10, 2019 at 11:27 AM Gina Gillis <ggillismail@gmail.com> wrote:


Hey Rob,

Shoot me back your estimate and contract. Thanks for coming out.

Dan and Gina Gillis

114 S. Broad St Suffolk Va. 23434

Notice of Inspection and Consent for Access to Worksite by Homeowner

		US ENVIRONMENTAL PROTECTION AGENCY Region 3 1650 Arch Street Philadelphia, PA 19103		
TOXIC SUBSTANCES CONTROL ACT TITLE IV - LEAD EXPOSURE REDUCTION NOTICE OF INSPECTION & CONSENT FOR ACCESS				
1. INVESTIGATION IDENTIFICATION			3. ADDRESS OF PROPERTY INSPECTED	
DATE <i>9/4/2019</i>	INSPECTION NO. <i>2019060</i>	DAILY SEQ. NO. <i>0001</i>	<i>114 S BROAD ST SOPPOLE VA</i>	
			4. DATE OF PROPERTY CONSTRUCTION <i>1906</i>	
CONSENT FOR ACCESS				
<p>I, the undersigned, am the owner, their representative, or otherwise control the real property at the location described above. The Environmental Protection Agency has requested entry and access to my property pursuant to its responsibilities under the Renovation, Repair, and Painting Rule of the Toxic Substances Control Act (40 C.F.R. §745.80 et seq.). I acknowledge and understand this written notice, and I consent to allow representative(s) of EPA to enter my residence to inspect the renovation to determine if the renovator is satisfying the requirements of the Renovations, Repair and Painting Rule.</p> <p>This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind. I have received information regarding this inspection. I grant permission for access to the property by the representative(s) of EPA at reasonable times.</p>				
OWNER/OCCUPANT SIGNATURE <i>Gina Gillis</i>			INSPECTOR'S SIGNATURE <i>Paul S. Ruge Jr.</i>	
NAME <i>Gina Gillis</i>			NAME <i>PAUL S. RUGE JR.</i>	
RELATIONSHIP TO PROPERTY (owner, tenant, etc.) <i>owner</i>	DATE SIGNED <i>9-4-19</i>	TITLE <i>SEE LEAD INSPECTOR</i>	DATE SIGNED <i>9/4/2019</i>	

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION III

TSCA Section 406(b)/402(c) Inspection
Renovation, Repair, and Painting Rule **Site Inspection Report**

Inspector	PAUL S. RUGE JR.	Date	9/4/2019
Secondary Inspector		Time START	1 PM
		Time END	3 PM
Site Address	114 S. BROAD ST. SUFFOLK VA 23434		

ADMINISTRATIVE PROCEDURES

- ☒ Present EPA credentials
- ☒ Present Consent for Access form, obtain signature
- ☐ Present Notice of Inspection (NOI) form, obtain signature
- ☐ TSCA Confidential Business Information (CBI) explained and signed by person in charge
- ☐ Receipt for Documents form explained, to be reviewed and signed at end of inspection

Type of Inspection: ☒ Tip/Complaint Site Visit ☐ Active Site Inspection
☐ Unplanned Site Visit ☐ Follow Up Inspection
☐ Other: _____

Access Granted? Yes / No

INITIAL MEETING

Name: GIWA GIKLIS

Title: _____ Language Spoken: ENGLISH

- ☐ worker
- ☐ supervisor
- ☐ company owner
- ☒ home owner
- ☐ tenant
- ☐ neighbor
- ☐ other

Notes from discussion with person you spoke to:

PROPERTY INFORMATIONDate property built: 1906 (Actual / Approximate)**Type of Property:**

- ☒ Single-family house (single-detached dwelling)
☐ Single-family house (rowhome/attached dwelling)
☐ Multi-unit house (single-detached dwelling)
☐ Multi-unit complex (condominiums/apartments)
☐ Child occupied facility
☐ Commercial/residential
☐ Detached structure on property (e.g. garage, shed, barn, etc.)
☐ Other: _____

Firm InformationName: PRIME CUT PAINTAddress: 1414 BAYCHESTER AVE NORFOLK VA 23503

Phone Number:

Owner/President Name: ROBERT LAUTER☐ Collect business card(s)

Phone:

Email:

Company supervisor name/phone:

RRP Certified Renovator(s) name/phone:

General Contractor:

Name

Address

Phone

Other Contractor:

Name

Address

Phone

Subcontractor(s)

Name

Address

Phone

Collect:

- ☐ Collect RRP renovator certificate(s)*
- ☐ Collect EPA firm certificate(s)
- ☐ Collect worker on-the-job training records
- ☐ Collect contract(s)
- ☐ Collect acknowledgment of receipt for *Renovate Right*
- ☐ Collect work practices checklist
- ☐ Collect building permits
- ☐ Collect post-renovation cleaning verification
- ☐ Collect lead dust sampling technician certificate
- ☐ Collect lead dust sampling documentation
- ☐ Collect lead test documentation
- ☐ Collect lead risk assessment/inspection documentation

NOT ON
SITE AT
INSPECTION

***required by regulations to be available on site**

Italics = collect if available

OBSERVATIONS			
GENERAL SITE			PHOTO #
Street Signs			1
Property Address			2+3
Property Overall			2
Renovator signs, vehicle, ad, T-shirt, truck			4
Building permits posted			4+6
GENERAL OBSERVATIONS			PHOTO #
What is the general work status?	<input type="checkbox"/> In preparation <input type="checkbox"/> Renovation in progress <input type="checkbox"/> Renovation nearing completion <input type="checkbox"/> Renovation complete <input checked="" type="checkbox"/> Other		
WORK WAS STOPPED BY OWNER			
What is the current work status AT THIS TIME?	<input type="checkbox"/> Workers are active <input type="checkbox"/> Workers are cleaning <input type="checkbox"/> Work is done for the day <input type="checkbox"/> Work is complete		
How many workers are on site?	0		
Are workers actively disturbing paint? Describe:	Yes	No	N/A
*Take photos or videos			
Estimated sq. ft. of paint being disturbed	Inside: Outside: > 4500 SQ. FT.		

ALL 4 SIDES OF HOUSE EXTERIOR

What type of work is being done? Describe where:	<input checked="" type="checkbox"/> Painting Prep/Sanding <input type="checkbox"/> Demolition <input type="checkbox"/> Window Replacement <input type="checkbox"/> HVAC <input type="checkbox"/> Drywall <input type="checkbox"/> Electrical <input type="checkbox"/> Siding <input type="checkbox"/> Roofing <input type="checkbox"/> Masonry <input type="checkbox"/> Cleaning <input type="checkbox"/> Other			
Are any of the following visible? Describe where:	<input checked="" type="checkbox"/> Paint chips <input type="checkbox"/> Paint dust <input checked="" type="checkbox"/> Paint debris <input type="checkbox"/> Renovation waste <input type="checkbox"/> Other			12, 14, 15, 16 26 + 29
*Take photos close up and in context				
Are any tools/machines/equipment visible? In use? Describe:	no			
Is / does it appear that the property is occupied? If Yes: <input type="checkbox"/> Tenant <input checked="" type="checkbox"/> Owner <input type="checkbox"/> unknown	Yes	No	n/a	
Does a pregnant woman live at the property?	Yes	No	n/a	
Do children appear to live at the property? How many: Approximate age(s): *Take photos of evidence (i.e. toys, strollers)	Yes	No	n/a	
Do children live in neighboring properties?	Yes	No	n/a	
Any other hazards <i>unrelated</i> to RRP? Explain:	Yes	No	n/a	

ACTIVE WORK SITE <i>NOT ACTIVE</i>				PHOTO #
Warning signs posted at entrance(s) to the work area	Yes	No	N/A	
Test Kit used to determine if lead-based paint is present	Yes	No	N/A	
Area contained to prevent the spread of dust and debris	Yes	No	N/A	
Interior				
All objects in the work area are covered with plastic sheeting and sealed, or removed from the work area	Yes	No	N/A	
All HVAC ducts in the work area are closed and covered with taped-down plastic sheeting	Yes	No	N/A	
All windows in the work area are closed	Yes	No	N/A	
All doors in the work area are closed and covered with plastic sheeting				
Doors used as an entrance to the work area are covered with plastic sheeting in a manner that allows workers to pass through while confining dust and debris to the work area	Yes	No	N/A	
Floors in the work area are covered with taped-down plastic extending 6 ft. beyond the perimeter of surfaces undergoing renovation or sufficient distance to contain dust	Yes	No	N/A	
Precautions are used to ensure that all personnel, tools, and other items are free of dust and debris before leaving the work area	Yes	No	N/A	
Exterior				
All windows within 20 feet of the renovation are closed	Yes	No	N/A	
All doors within 20 feet of the renovation are closed				
<i>On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.</i>	Yes	No	N/A	
Doors used while the job is being performed are covered with plastic sheeting in a manner that allows workers to pass through while confining dust and debris to the work area	Yes	No	N/A	
Ground covered with plastic sheeting extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris	Yes	No	N/A	
<i>If renovation affects surfaces within 10 feet of the property line, vertical containment or equivalent extra precautions in containing the work are to ensure that dust and debris does not contaminate adjacent buildings or properties</i>	Yes	No	N/A	
Prohibited Practices				
Open-flame burning or torching	Yes	No	N/A	
Sanders, grinders, power planing, needle gun, abrasive blasting, sandblasting without containment systems and HEPA vacuum attachment to collect dust and debris at the point of generation	Yes	No	N/A	

Power washing without containment and water collection	Yes	No	N/A	
Waste				
Waste from renovation activities contained to prevent release of dust and debris before waste is removed from the work area for storage or disposal	Yes	No	N/A	
At the end of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris	Yes	No	N/A	

POST-RENOVATION <i>NOT COMPLETED</i>				
Cleaning the work area				
Work area cleaned until no dust, debris, or residue remains	Yes	<input checked="" type="radio"/> No	N/A	
All paint chips and debris are collected and sealed in a heavy duty bag	Yes	<input checked="" type="radio"/> No	N/A	
Plastic sheeting is removed by misting, folding inward, taping shut or sealed in heavy duty bag	Yes	<input checked="" type="radio"/> No	N/A	
Cleaning – Interior: All surfaces within 2 ft of work area				
Walls cleaned from the ceiling to floor by vacuum with HEPA vacuum or wiping with damp cloth	Yes	No	N/A	
All remaining surfaces/objects in work area thoroughly vacuumed with HEPA vacuum (equipped with a beater bar for carpets and rugs)	Yes	No	N/A	
All remaining surfaces/objects are wiped with a damp cloth. Floors are mopped thoroughly keeping wash water separate from rinse water (2-bucket mopping or wet mopping)	Yes	No	N/A	
Post-Renovation Cleaning Verification				
Certified renovator performs a visual inspection (if dust, debris, or residue is present, the work area must be re-cleaned and another visual inspection must be performed)	Yes	<input checked="" type="radio"/> No	N/A	
Certified renovator verifies each windowsill in work area has been adequately cleaned using wet disposable cleaning cloth and cleaning verification card	Yes	<input checked="" type="radio"/> No	N/A	
Certified renovator verifies floors and countertops within work area have been adequately cleaned using wet disposable cleaning cloths and cleaning verification card	Yes	No	N/A	
Optional Dust Clearance testing performed instead of post-renovation cleaning verification	Yes	No	N/A	

NOTES: PAINT APPEARED TO BE SCRAPPED
CHIPS ON GROUND ON ALL 4 SIDES OF HOUSE
PAINTER DUMPED BUCKETS OF PAINT DUST + CHIPS
IN WATER ALONG SHED.
ON GROUND

Closing:

- ☐ Review Receipt for Documents and Samples form for completeness
- ☐ Leave a copy of the NOI, CBI, and Receipt for Documents and Samples form with the person in charge
- ☐ Leave Your Business Card
- ☐ Leave RRP Compliance Package

Next Steps:

- ☐ Schedule Office/Records Inspection
 - ☐ Come back to visit the site Date: _____
- ☐ Visit another site the company is working on

COMMENTS FROM INTERVIEW/NARRATIVE

Write any information here regarding the inspection interview that may not be captured elsewhere in the report.

GINA GILLIS - HOUSE + YARD LEFT IN PRESENT
CONDITION BY PRIME CUT

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

) Renovation Property located at:

) 114 S. Broad Street
) Suffolk, VA 23434
)

) Complainants Name and Address:

) Daniel Gillis

) 114 S. Broad Street

) Suffolk, VA 23434

) Phone: 757-334-6468

) Email:

) Status of Complainant:

) Circle One - Owner/Tenant/Other

DECLARATION OF Daniel Gillis,
Complainant
County of: Suffolk City
Commonwealth/State of: Virginia

I/we, the undersigned declarant(s), state the following:

1. With respect to your written or oral renovation work agreement, responses for each of the following questions should be provided by circling or marking the appropriate answer:

- a. Did the renovation/remodeling work involve pre-1978 housing or a pre-1978 child-occupied facility?

YES NO UNKNOWN

- b. If yes, what year, to the best of your knowledge, was the housing or facility built? 1906

- c. Did the renovator/remodeler receive any form of compensation for the work?

YES NO UNKNOWN If yes, please explain:

See contract

d. Did the renovator/remodeler disturb more than 6 square feet of painted surface per room on the interior or more than 20 square feet on the exterior?

☒ YES ☐ NO ☐ UNKNOWN

e. Is the firm that performed the renovations EPA certified?

YES ☒ NO ☐ UNKNOWN

f. Is the renovator who performed the work EPA certified?

YES ☒ NO ☐ UNKNOWN

(originally stated
he was lead
certified)

g. Did any of the following conditions apply to the renovation/remodeling work?

- Was this an emergency renovation? YES ☒ NO ☐ UNKNOWN
- Was it a lead abatement performed by a certified lead abatement contractor? YES ☒ NO ☐ UNKNOWN
- Was this certified lead-free housing? YES ☒ NO ☐ UNKNOWN
- Was this a zero-bedroom dwelling? YES ☒ NO ☐ UNKNOWN
- Was this housing for the elderly or disabled? ☒ YES ☐ NO ☐ UNKNOWN

2. During the renovation, were lead safe work practices followed? Please circle yes, no, or unknown for each activity:

- Were warning signs posted? YES ☒ NO ☐ UNKNOWN
- Were plastic containment barriers set up? YES ☒ NO ☐ UNKNOWN
- Were all objects in the work area removed or covered? YES ☒ NO ☐ UNKNOWN
- Were HVAC ducts in the area closed or covered? YES ☒ NO ☐ UNKNOWN
- Were windows and doors closed? YES ☒ NO ☐ UNKNOWN
- Were floors (interior) and ground (exterior) covered with plastic? YES ☒ NO ☐ UNKNOWN
- Was the work site properly cleaned after renovation? YES ☒ NO ☐ UNKNOWN

3. During the renovation period, the following children resided on the property:

Name of Child

Date of Birth

Jaxon Gillis (special needs)	6-13-11
_____	_____
_____	_____

4. Was any occupant pregnant at the time the work was performed? YES ☒ NO

5. Were any lead hazards identified before, during or after the renovation work?
YES ☒ NO UNKNOWN

If yes, please explain and provide any supporting documentation:

6. Date contract was signed, or, date that agreement for renovation work was entered into orally: _____

Date of Contract/Date Agreement Reached for Renovation Work

7. Date(s) of Renovation: 7 20 2019 to no end date/finish date
Month Day Year Month Day Year

8. Describe the renovation/remodeling activities conducted:

Pressure wash house exterior
scrape loose paint
patch, prime, paint

9. Identify the location(s) of the work performed:

Common Area _____ Interior _____ Exterior ☒

10. Indicate the type of housing renovated/remodeled:

Detached Single Home ☒ Townhouse/Row home _____
Common Area of Multi-Unit Building _____ Apartment Unit _____

11. Check any or all that were provided:

Confirmation of Receipt of Lead Pamphlet _____

Renovation Notice (for common area or multi-unit housing) _____

12. Please provide names, addresses and phone numbers of all contractors, subcontractors, companies or individuals that performed the renovation work:

Name: Prime Cut Paint Robert M. Lauke

Address: 1414 Baychester Ave Norfolk, Va 23

Phone: _____

13. Did you receive a copy of a pamphlet entitled *Renovate Right* before signing a renovation contract or arranging to have work performed by a renovator/remodeler, or at any time from the renovator/remodeler? YES NO UNKNOWN

If yes, when did you receive the pamphlet from the renovator/remodeler: before, during or after the work was performed? _____

14. Did the renovator/remodeler provide you with any type of notification information? YES NO UNKNOWN

If yes, describe the information provided, and state whether the information was provided before, during or after the work was performed:

15. a) What method did you use to pay the renovator/remodeler:

Check _____ Cash ✓ Money Order _____ Other _____

b) How much did you pay in total? \$ _____

c) How much did you pay as a deposit? \$ 1817.50


16. Do you have cancelled checks, receipts for payment, copies of money orders or other proof of payment to the renovator? YES NO

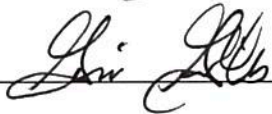
If yes, and if you wish to do so, please enclose a copy or copies of receipts, cancelled checks, etc.

Additional Comments:

I/We certify that this declaration is true and I/we voluntarily submit it to the United States Environmental Protection Agency (EPA) in connection with a matter within EPA's jurisdiction. I/We are aware that it is a violation of the False Statements Act, 18 United States Code ' 1001, for us/me to knowingly or willfully make any false, fictitious or fraudulent statements or representations to the EPA, and such statements may be a federal crime.

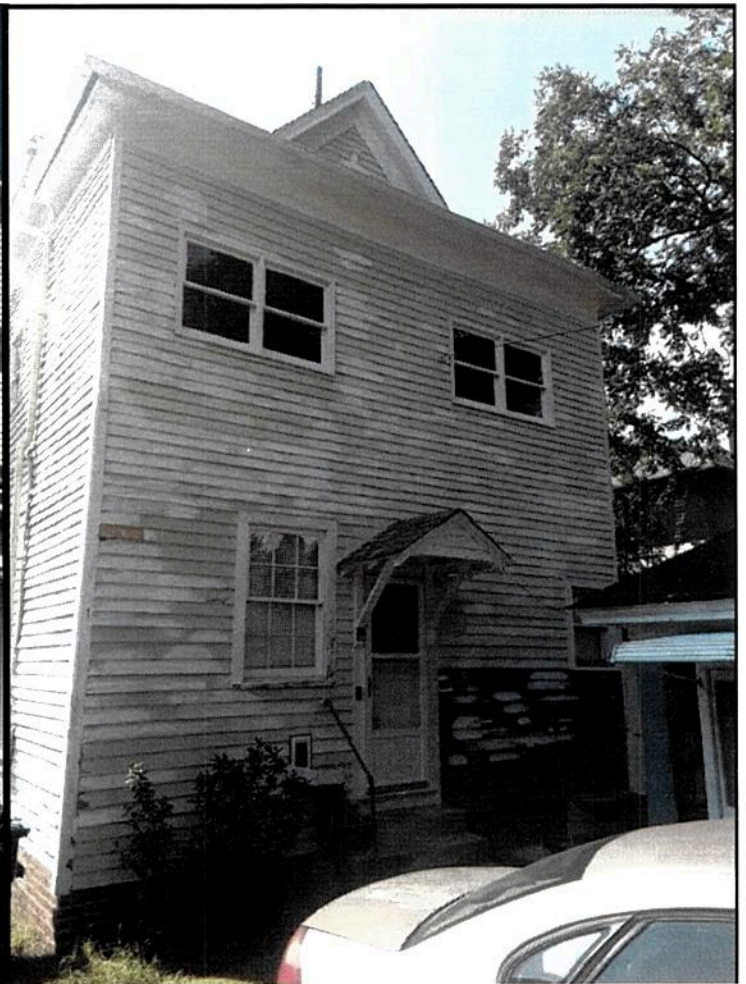
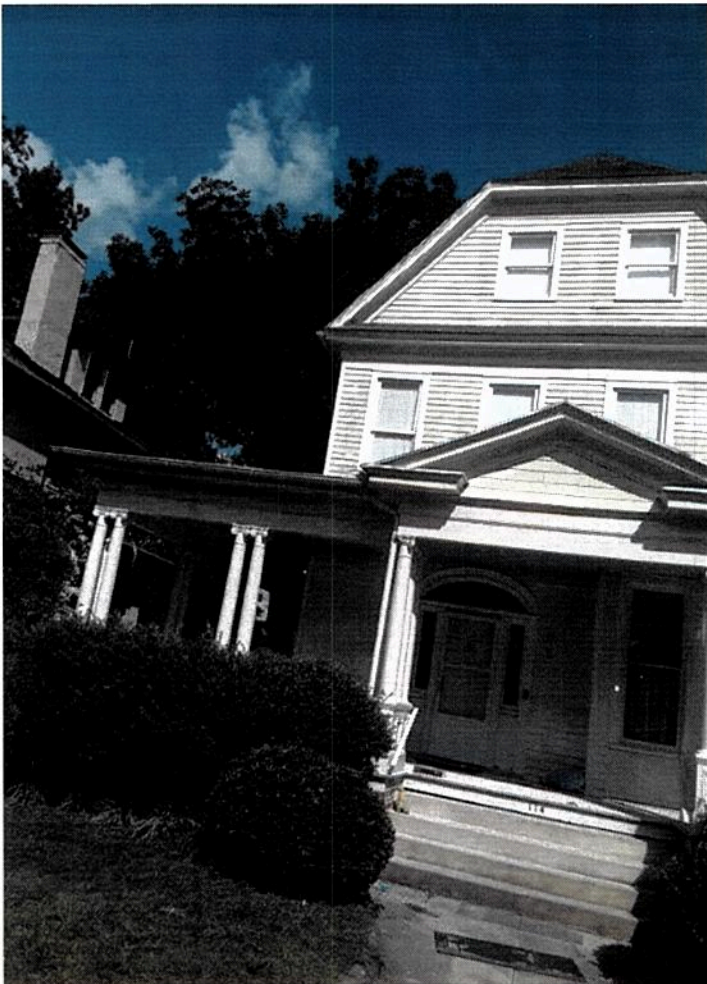
***Please provide a phone number where you may be reached: 757-334-6468 757-334-6469

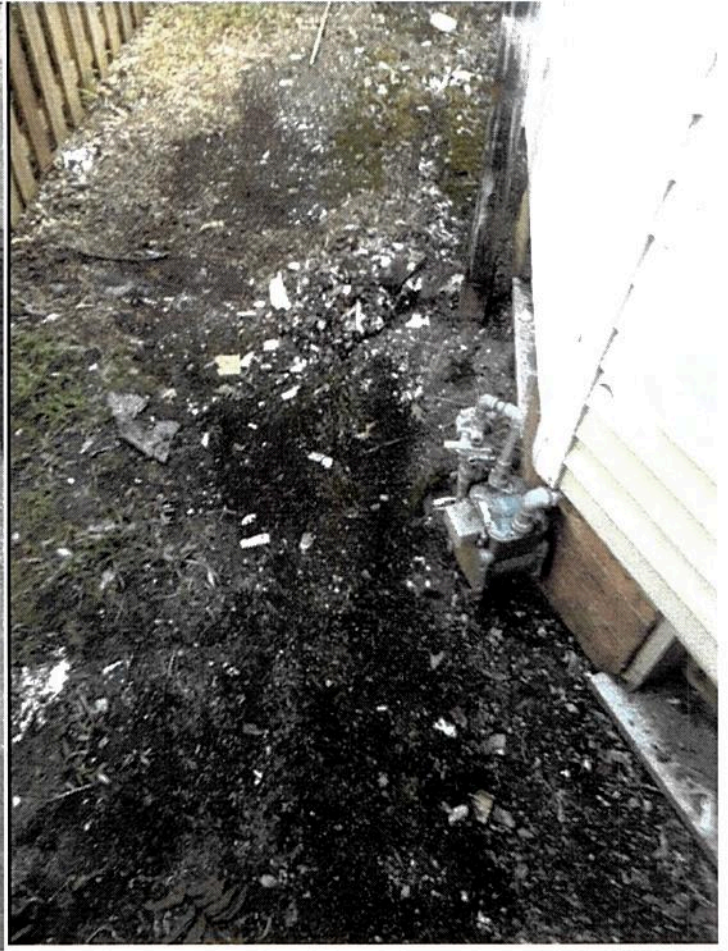
Complainant's Signature: X  Date: 9/4/19

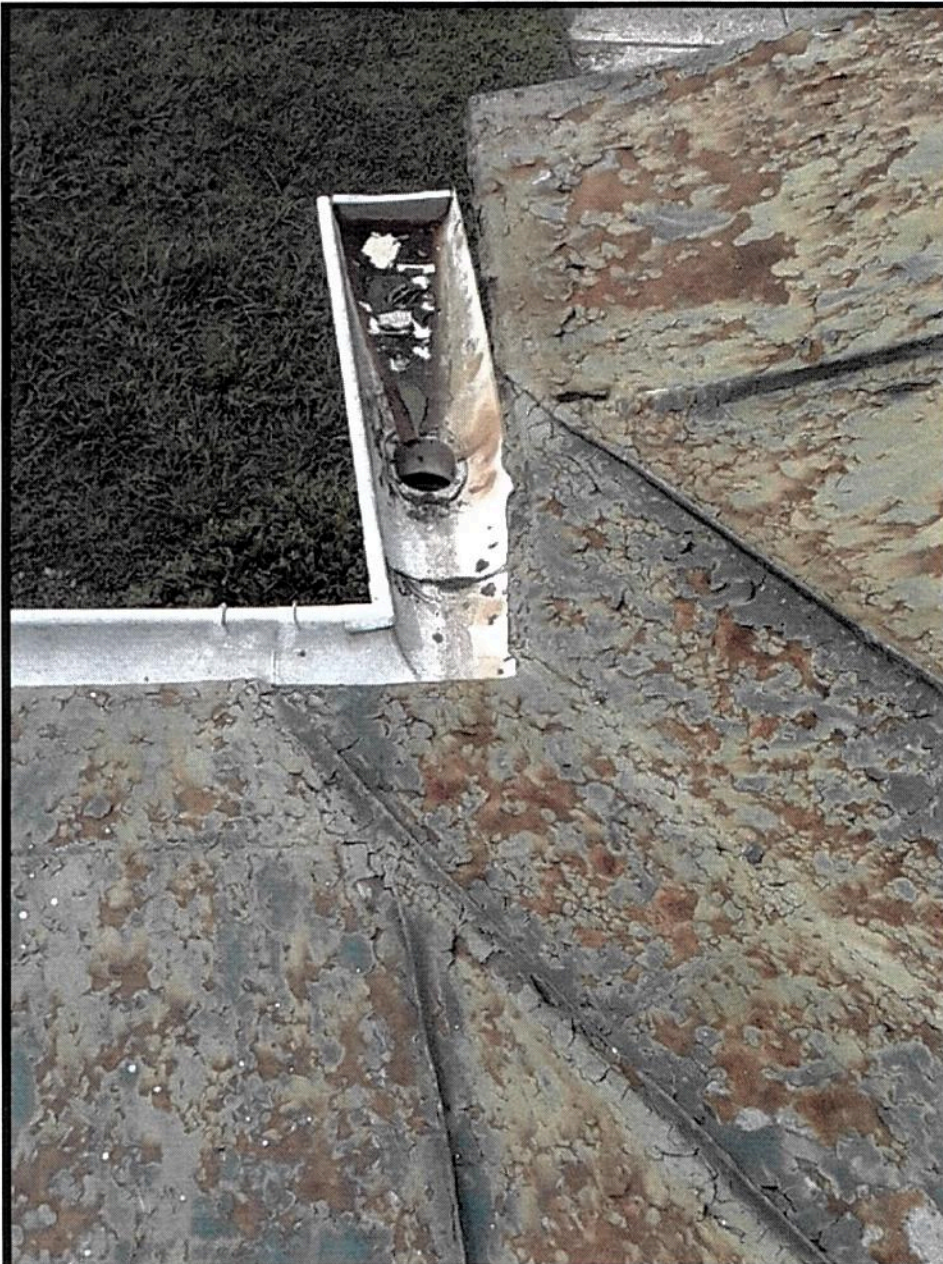
Complainant's Signature: X  Date: 9-4-19

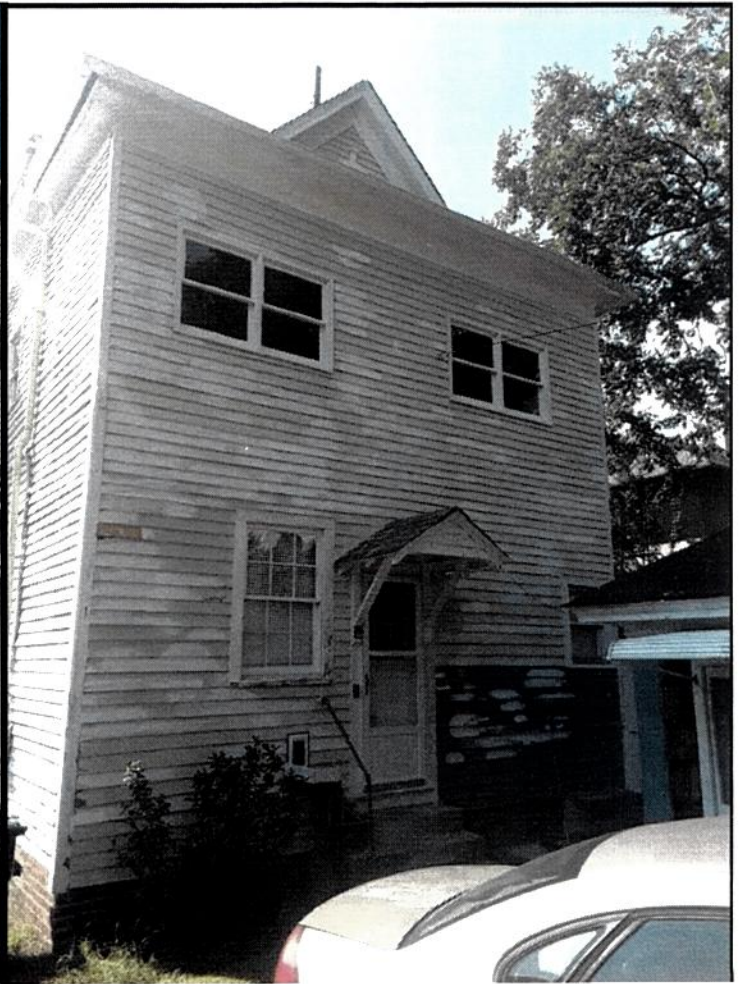
Witness's Signature: X _____ Date: _____

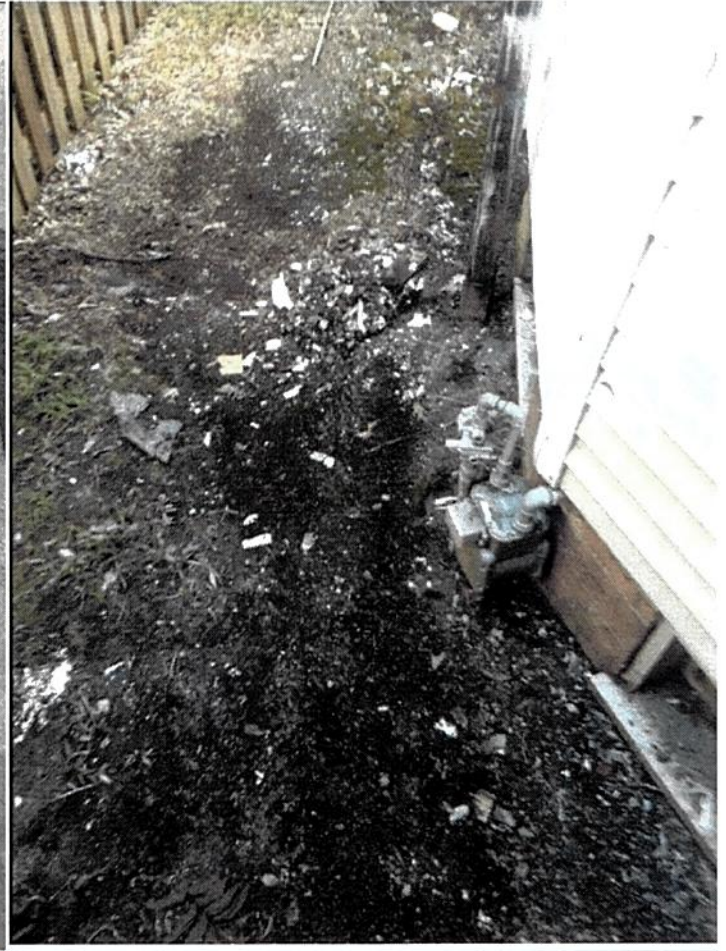
PLEASE PROVIDE ANY ADDITIONAL INFORMATION BELOW, OR PLEASE ATTACH ANY ADDITIONAL INFORMATION THAT YOU WISH TO SUBMIT TO THIS FORM.

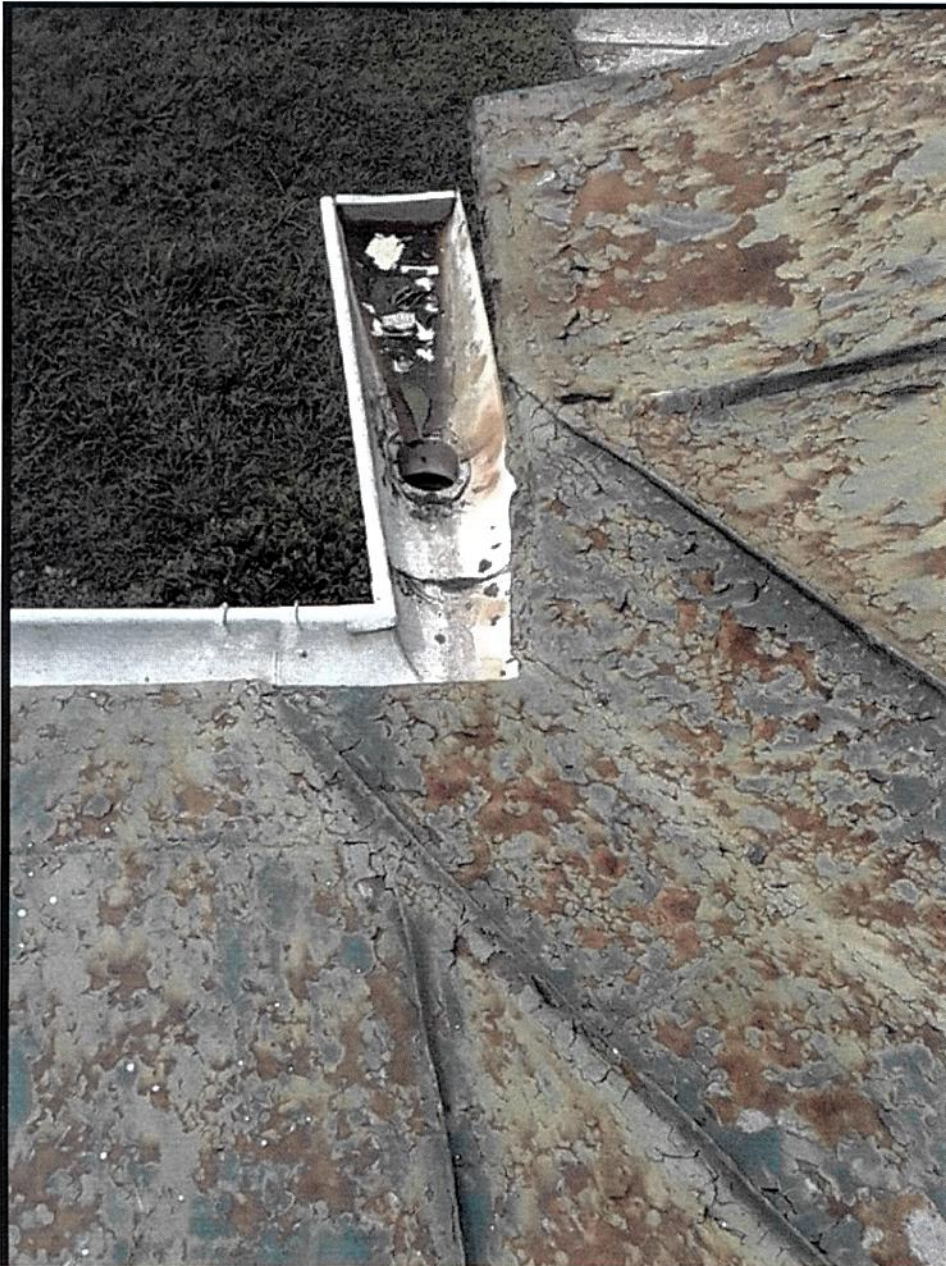














**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

UPS Tracking #: 1ZA4216Y0196300011

Date: August 26, 2019

Daniel Gillis
114 S. Broad Street
Suffolk, VA 23434

Dear Mr. Gillis:

In response to your tip/complaint concerning alleged violations of the Renovation, Repair, and Painting (RRP) Rule, the United States Environmental Protection Agency (EPA) - Region III requests that you enclose your renovation contract, receipt for payment, any lead-based paint inspection documents that are available, any photographs or details regarding renovation activities that were performed, and any medical results related to elevated blood lead levels if you agree to release such documents. In addition, please complete the enclosed forms and place the completed forms and all documents in the enclosed UPS envelope and place them in UPS within 30 days. If you need to send any additional information at a later date, please send it by e-mail or address it to:

SEE Inspector Paul J. Ruge Jr.
U. S. EPA - Region III
Land & Chemicals Management Division
Toxics Programs Branch (3LC61)
701 Mapes Road
Fort Meade, MD 20755

If you have any questions, you may contact me at 410-305-2683 or email at ruge.paul@epa.gov. If the requested information is not provided within 30 days, your tip/complaint will be closed. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Ruge Jr.", is written over a horizontal line.

Paul J. Ruge Jr.
SEE Inspector
EPA-Region III

Enclosures: Declaration
Renovate Right

Foley, Patrick-J (he/him/his)

From: Gina Gillis <ggillismail@gmail.com>
Sent: Friday, October 18, 2019 7:59 AM
To: Ruge, Paul
Subject: Re: Additional information request - Prime Cut

Also he power washed the entire house including the roof and porch floor to remove loose paint as well. He did that the very first day. I think I already told you that before but I want to make sure. He did the back building as well.

On Thu, Oct 17, 2019, 3:56 PM Ruge, Paul <Ruge.Paul@epa.gov> wrote:

Thank you

Sincerely,

Paul J. Ruge Jr.

SEE Lead Inspector

U.S. Environmental Protection Agency

Land and Chemicals Division

Toxics Program Branch

EPA Environmental Science Center

701 Mapes Road

Fort Meade, MD 20755

Phone: (410) 305-2683

Fax: (410) 305-3093 (please use cover sheet)

Ruge.paul@epa.gov

From: Gina Gillis <ggillismail@gmail.com>
Sent: Thursday, October 17, 2019 3:43 PM

To: Ruge, Paul <Ruge.Paul@epa.gov>

Subject: Re: Additional information request - Prime Cut

1. We stripped and partially prepped the spindles on front porch as he refused to do because he said it was too tedious. We also filled in deep crevices from his scraping on the walls of the front porch and where he found rotted wood.(He would find bad wood and tell us and we would fill or replace the board. Prime cut did the rest of the scraping and sanding on the entire house and he used a white latex primer.

2. There are 4 adults and 1 -8 yr old living in the home. During the time prime cut was here we had another 2 yr old visiting in the home. Our neighbors have an infant of less than 1 yr and several grandchildren who were visiting.(all within 10 feet)

3. Pic 1....Rob scraped and primed all, we only filled and replaced board.

Pic 2....Rob scraped and primed

Pic 3...dark gray paint is a sample paint color. Light green is original color, All white primer was over his scraping.

4.He scraped with a five in one tool and a large handle flat scraper (2 in 4 edge scraper). He also used a long pole with a round sander on it.

He stated he was going to use a grinder on the metal roof and told us not to worry he used to work on the railroad and knew what he was doing. He was also going to treat the metal roof with Ospho, which turns the rust back to metal.

He worked off of a ladder scraping and using his one gallon primers to prime as he went along.

Let me know if you need anything else.

Dan and Gina

On Thu, Oct 17, 2019, 12:28 PM Ruge, Paul <Ruge.Paul@epa.gov> wrote:

Dear Ms. Gillis,

Thank you for your call today.

As we discussed, please provide me some additional information for the following concerns.

- 1.How much and what parts of your house at 114 S. Broad St., Suffolk, VA were scraped, sanded, and prepped for painting were done by you and your husband and how much was done by Prime Cut Paint?
- 2.How many people were living in the house or visiting during the time of preparation by Prime Cut Paint. If any children or pregnant women were in that number, please let me know. Please tell me the children's ages if possible.
- 3.In the attached pictures, who prepped and painted these areas? Was the light green the primer or original color of the house? What is the dark grey color? Was the white Prime Cut's primer?
- 4.In our conversation, you mentioned he scraped the house. Please describe how and with what he scraped the house and roof.

Thank you for your help in this matter.

If you have any questions, please do not hesitate to call.

Sincerely,

Paul J. Ruge Jr.

SEE Lead Inspector

U.S. Environmental Protection Agency

Land and Chemicals Division

Toxics Program Branch

EPA Environmental Science Center

701 Mapes Road

Fort Meade, MD 20755

Phone: (410) 305-2683

Fax: (410) 305-3093 (please use cover sheet)

Ruge.paul@epa.gov

Foley, Patrick-J (he/him/his)

From: Gina Gillis <ggillismail@gmail.com>
Sent: Friday, November 1, 2019 5:08 PM
To: Ruge, Paul
Subject: Re: EBLI child
Attachments: 20191101_170617.jpg; 20191101_165029.jpg

Elevated blood level for our child and his pleading in court admitting to sending the photos of the other historic home he scraped and primed, that I had forwarded to you.

On Thu, Oct 31, 2019, 9:58 AM Ruge, Paul <Ruge.Paul@epa.gov> wrote:

Dear Ms. Gillis,

Received your voicemail this morning. Sorry to hear about your child.

Would you be able to send me a copy of the doctor's report or a statement concerning the EBLI level that your child is at? I would like to have it added to the report.

Thank you and I hope all turns out well.

Sincerely,

Paul J. Ruge Jr.

SEE Lead Inspector

U.S. Environmental Protection Agency

Land and Chemicals Division

Toxics Program Branch

EPA Environmental Science Center

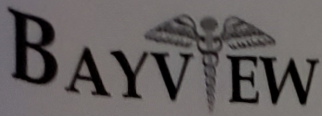
701 Mapes Road

Fort Meade, MD 20755

Phone: (410) 305-2683

Fax: (410) 305-3093 (please use cover sheet)

Ruge.paul@epa.gov



Lakeview Pediatrics and Family Medicine

Bayview Physicians Group

www.BayviewPhysicians.com

Providers:

Serena Barakat, MD
Benjamin Goins, MD
Douglas Gregory, MD, FAAP
Palak Kachhadia, MD
Laura McGath, RN, CPNP-PC
Beatrice McLaughlin, FNP-C, MSN
Benedict Ngwa, NP
Jessica Saxbury, DO, FAAP
Janice Woodard, CPNP
Laura Wright, MD, FAAP

General Sick Visit

Save DRAFT to SRS

Save FINAL to SRS

Patient: [REDACTED]

DOB: [REDACTED]

DOS: October 29, 2019

Chart #: 20526893

Age & Sex: 8 year old male

ASSESSMENT & PLAN:

Increased sleep pattern

Elevated capillary lead level

-encourage high protein foods to avoid dorps in BS

-push fluids

-f/u if fever or other symptoms present

Vitals: BP: 87/70 HR: 96 Temp: 98.7 Wt: 64 lbs 8 oz - 10/29/2019 3:45:00 PM

Follow Up: as needed or if no improvement

Labs:

Venous Lead level

We will contact you by phone with positive lab results. You will receive a phone call once all routine lab results are back. If you have not heard from us within 2 weeks, please contact us. We will call you if there is anything of concern or if we need to make significant changes to your treatment plan.

Our team enjoys working with you; please stay safe and healthy until we see you again.

Copy of above given to patient.

Address:

3060 Godwin Blvd
Suffolk, VA 23434

Ph: (757) 923-9660

Fax: (757) 923-9665

Patient: [REDACTED]

DOB: [REDACTED]

Chart #: 20526893

DOS: 10/29/2019

Page 1 of 4

4

Gmail

Lauter Robert <primecutpaint@gmail.com>

114 S. Broad St. Suffolk paint job

Gina Gillis <ggillismail@gmail.com>
To: primecutpaint@gmail.com

Wed, Jul 10, 2019 at 11:26 AM

Hey Rob,
Shoot me back your estimate and contract. Thanks for coming out.
Dan and Gina Gillis

114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>

Wed, Jul 10, 2019 at 6:35 PM

To: Gina Gillis <ggillismail@gmail.com>

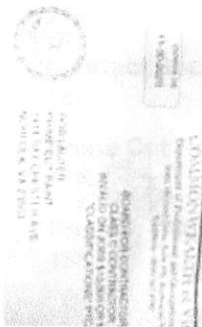
Dan thanks so much, here's the stuff, my license info and the contract along with info on the warranty custom option, most of the legal mumbo jumbo is for brokers or builders, but for home owners articles 8,10 and the disclaimer is the important stuff. The work order is blank, we fill that out together if you decide to use me. I also added some photos of a project similar to yours I just completed. Thanks again.

Cordially,

Rob

www.primecutpaint.com

[Quoted text hidden]

9 attachments**0312190907 (1).jpg**
674K**0615191058a.jpg**
591K**0619191255a (1).jpg**
621K

[Gmail]

Lauter Robert <primecutpaint@gmail.com>

114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>

Mon, Aug 12, 2019 at 6:55 AM

To: Gina Gillis <ggillismail@gmail.com>

Greetings, I was just wondering when I am going to be able to re-mobilize, are the handrails done? I kind of need to know because I'm going to need the tall ladder on another job beginning the 20th, the other ones are fine. so I need to get those two third story pediments and hopefully all the spraying done this week, except for the porch roof and deck. then all I have is hand work.

Cordially,

Rob

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Gina Gillis <ggillismail@gmail.com>

Tue, Aug 13, 2019 at 3:24 PM

To: Lauter Robert <primecutpaint@gmail.com>

Hey Rob,

Just went outside and saw the porch rails were painted. Is that the primer? Looks scary. I see places where its been painted overtop of large pieces of dirt particles, cobwebs and it doesnt look like you vacuumed the dust and loose particles off before painting. Theres lots of drips and missed spots. Im very concerned as we spent alot of time scraping and sanding those so they'd look better. Whats the plan? I am super nervous. Also, is that gonna come off of our flower pots, bushes, concrete, windows, scaffold, ladder, etc? Please take your time and let me know what we need to do to make this look good. I am depending on you, the pro painter.

Thanks,

Gina

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>

Tue, Aug 13, 2019 at 5:44 PM

To: Gina Gillis <ggillismail@gmail.com>

Here is the invoice for the materials. The reason I didn't want to stop to begin with, is that I had already taken two weeks to scrape, prime and caulk, from when I pressure washed, in the time since I demobilized I saw new cob webs and a hornets nest had been built since the last time I left. Obviously the hand rails have been both primed and painted to the extent the chemicals you were using on them may or may not play a role remains to be seen, in any event I'm sure its nothing that can't be corrected. Overspray occurs and can be removed with a razor from glass surfaces, and a wire brush or grinder from concrete. I asked Mr. Gillis to remove all items from the work area that yaw were worried about and he intimated only the rocking chairs were an issue. I removed them, your fan and your vacuum cleaner myself this morning, but will ask that anything you're worried about be kept away from the house for the next 3-4 days. Drips can be scraped sanded etc, I have attached a punch list you can fill out but I would wait until I bill you to begin filling it out otherwise you will just write things down that have already been corrected. please read the instructions on the punch list before you fill it out.

Cordially,

Rob

www.primecutpaint.com

[Quoted text hidden]

2 attachments **invoice.docx**
268K **punch list.docx**
15K

114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>

Fri, Aug 16, 2019 at 6:23 AM

To: Gina Gillis <ggillismail@gmail.com>

Gina I am attaching the forecast which they have altered again here

As you can see not looking very promising, which is always the risk you take when demobilizing especially for such a prolonged period of time. It's now looking like Wednesday before I am able to get any sort of progress done on the project, what are the chances of you mailing the check for the materials?

Cordially,
Rob

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Gina Gillis <ggillismail@gmail.com>

Fri, Aug 16, 2019 at 5:14 PM

To: Lauter Robert <primecutpaint@gmail.com>

Rob,

We didn't ask you to demobilize and it definitely wasn't a prolonged time you were away, we just asked you to scrape off the loose paint and prep it good before painting. You also asked us to find the areas that needed attention and we did so.

You could have stayed and scraped and prepped and could still be over here prepping but you just wanted to spray and that can't happen until it is prepped correctly.

There are areas that you sprayed over top of loose hanging paint, half of some columns and rails got missed with paint and there's enough over spray to choke a horse. We just want you to realize this is are home and want a professional job done.

We need you to slow down and re focus on the prep please. We have told you we are not in a rush and that's why we opted for the more expensive custom job to have it done right.

I understand you don't want to bring your helpers over because you can't trust them, but that means it is going to be a longer time for you to get this done alone. We'd like to see the prep completed and then the paint done.

You said you'd go back over the whole house to make sure its all been scraped good...you could be doing that, or finishing sanding the roof, or fixing the railings that have drips and scrapings, cobwebs, dust stuck in the paint etc. The spots that are being scraped and primed are not getting filled or feathered in, they are going to look bad when painted.

What can we do to make sure that doesn't happen? We were helping out on the porch because we didn't think you were going to prep it to the level we wanted to see but we can't keep up all that work. We are both beat.

So please going forward, let's work together to make sure our home is completed like you would want your home to look like.

See you soon,

Dan Gillis

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>
To: Gina Gillis <ggillismail@gmail.com>

Sat, Aug 17, 2019 at 6:46 PM

Greetings. On Wednesday the 7th, I arrived at 8:30 Am unloaded both of my sprayers and my truck as well as my shield to begin spraying, I also removed the furniture from the porch, you intimated that you wished to continue some prep work that is beyond the scope of the work order on the agreement, specifically on the hand rails. I accommodated you thinking it would be a day maybe two, this thread will confirm that after waiting 4 days I contacted you on Monday august 12th first thing in the morning to check the status, and was called later that afternoon and given the go ahead to re-mobilize. I did what I could and just as I predicted the weather has now become a factor and I came home to your scathing email. While I'm sensitive to the fact that you want special attention paid to the veranda, the fact of the matter is, it is top down process. I begin at the high areas for a number of reasons. First I have a tall ladder that weighs 250 lbs and it needs to be utilized as quickly as possible to be available for other projects, secondly hornets and spiders tend to begin rebuilding in hard to reach areas more quickly, thirdly higher areas receive less scrutiny and take more time to execute. The reason you want to spray as quickly as possible (once the majority of prep is done) is so we can figure out how much paint your project will actually require. As I explained, when I go up to spray, I bring a five in one and a spray can of primer to spot prime any areas I might have missed the first time, and then apply the final coat while up on the ladder to economize motion. The custom job allows you finals (once the work has been completed and you have been billed, it covers waterproofing, caulking things of this nature, I said I would apply ready patch on holes which it is designed for, I cannot refinish every area that has been scraped and to answer the question you asked earlier in a text I am aware of no product, that completely levels off every area that has been scraped. The aesthetics of a paint job are ancillary to its primary function which is to protect the property. With all due respect, I cannot justify bringing helpers out to walk around areas that you are looking at, when areas 25 and 30 feet in the air have yet to be coated. The overspray is irrelevant because it has to be cut in anyway. With regards to the overspray on glass, it has nothing to do with speed, it has to do with proximity, and can easily be addressed, I did not have my shield with me when I showed up on the 12th, which once more goes to demobilization as is outlined in the terms. With regards to any columns or trim that was missed while spraying, if their are access issues such as the corner columns on the veranda on the north side, the bushes will need to be cut back, any other areas can be touched up (once the project reaches the final stage). With regards to the weather, I cannot drive out on a gamble, if the forecast calls for storms or wind in excess of 15 mph, while spraying (I must defer to the experts) Which is why once again you want to spray as much as you can, as quickly as you can to avoid weather delays such as we are experiencing now. The fine tuning, removing over spray, scraping here and their, touching up missed things, can be done under threat of storms reasonably, with a step ladder and hand tools at the END of the job. Not 100 feet of ladder and sprayers sitting on a job waiting to be used, to address smaller issues on the ground level before moving on. Hopefully your concerns have been addressed. As of now it looks like I won't be able to get out there until Wednesday and Thursday to complete spraying the trim and begin on the walls, if the weather pattern changes I will be out sooner.

Cordially,

Rob

www.primecutpaint.com

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>

Tue, Aug 20, 2019 at 8:01 PM

To: Gina Gillis <ggillismail@gmail.com>

Greetings, This email will confirm that I received a voicemail from your husband today a 2:24 pm expressing your desire to terminate the contract, technically this is not an option however I will not lean on the legality of the contract if it is truly your desire to search elsewhere.. As I expressed on his voicemail, the deposit on labor is adequate for services already rendered, I have run off copies of your material invoices and will deliver them along with a weather log indicating a consistent pattern of weather issues including today and every work day with the exception of Saturday the 17th which I have a contract that dates back to August 1st to mobilize on another job including the last day I threw caution to the wind and worked on your job on August 13th after being demobilized on August 7th (well after another client had already arranged for me to mobilize). Please be advised, I will be on site tomorrow to collect my equipment, and bring you the paperwork your husband requires, however if the balance on materials is not settled, pursuant to article 10 of the legal instrument you signed I am entitled to 25% of the contract amount. I asked your husband on voicemail to contact me tonight, it has not happened, I had asked you to mail the check for materials on the 16th, that has not happened, if you are not available tomorrow when I arrive to demobilize for the final time to reimburse me for the pecuniary costs of your project, this email shall serve as a 10 day notice of intent, required under Virginia law, to seek damages and enforce the contract in it's entirety. As I expressed to your husband earlier, sorry we could not make it happen. Please make the payment in check, money order or digital form of payment, as I expressed to your husband cash payments I accept at the contract phase as the contract itself is a receipt.

Cordially,

Rob Lauter

www.primecutpaint.com

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Gina Gillis <ggillismail@gmail.com>

Tue, Aug 20, 2019 at 8:33 PM

To: Lauter Robert <primecutpaint@gmail.com>

Rob, send a copy of your firms Lead Certification. i need this.

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Gina Gillis <ggillismail@gmail.com>

Tue, Aug 20, 2019 at 11:20 PM

To: Lauter Robert <primecutpaint@gmail.com>

You may pickup your equipment at 11:30AM tomorrow, Wed. 8/21 All loose equipment has been collected and stored on the north side of the home. You are authorized to enter my property only to claim your property. leave all paperwork etc. on the top step of the porch as i will need time to review these documents before any consideration of payment.

Cordially,
Mr. Gillis

[Quoted text hidden]

114 S. Broad St. Suffolk paint job

Lauter Robert <primecutpaint@gmail.com>

Wed, Aug 21, 2019 at 5:17 PM

To: Gina Gillis <ggillismail@gmail.com>

Greetings. This email will confirm that at approximately 11:15 am this morning I arrived at your home in compliance with your expressed directions sent via this email thread less than 12 hours prior at which time I left paper work and began to collect my equipment, as I was in the process of loading my truck you summoned law enforcement citing threats of a physical nature. I provided the officer with not only a copy of the contract, but of the email directing me onto the property, and requested her card which she provided as well as consented to provide an affidavit if I required. Regarding lead certification neither federal nor commonwealth law requires certification for PRE work, however the pamphlet entitled "Protect Your Family from Lead in Your Home" was affixed to my copy of the contract which your husband signed. I keep it because I am required to do so for three years from execution of service, I am not required to surrender a copy to you, furthermore a copy was provided (or should have been pursuant to federal law) by the city of Suffolk when you received your certificate of appropriateness and work permit, you can google the name if you want your own copy. Lead certification is for abatement as defined by the uniform building code as being "15% or greater dyshesion of coatings" My Disclaimer clearly states "Abatement is not a function of Prime Cut Paint." Moving forward, it is my position that you and your husband are in fundamental breach of contract and that your actions today in conjunction with the erratic and even contradictory emails, which bounce back and forth between demanding I "scrape" to wanting lead certifications, indicate that this breach is malicious and hence actionable on levels above and beyond the normal disagreements over money that arise from time to time. Hence given the totality of the circumstances I find it prudent at this time to inform you of the following.

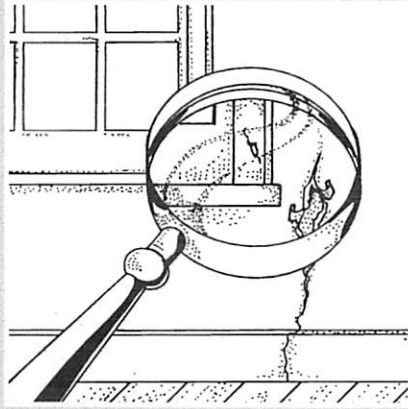
1.) The terms signed allow me to injunct the property in question "While litigation is going on." The title will be encumbered until all appeals are settled at which time if the court awards me damages I can then transition into a Mechanic's lien, permanently encumbering the property. Since neither you nor your husband show any evidence of being gainfully employed, thus garnishing your wages is impossible, once the lien is actuated I can propose a bill of unlawful detainer to have you removed from the premises, if it pleases the court to grant the request.

2.) Since there will be two matters before the court, the injunction on title of real property worth in excess of 25,000.00 and the warrant in debt which is worth less, the circuit court enjoys consecutive jurisdiction over both matters thus any action will be filed at the circuit court level, not small claims. Though I am under no compulsion to inform you of your rights, I will anyway, you do have a right to a jury. If full payment of the materials (using check, money order or debit card) has not been paid by September 5th 2009, in conjunction with the previously issued 10 day notice of intent, I will bring suite against you in circuit court for the outstanding balance, plus 25% late fee and 15% delinquent fee outlined in Article 10. Whether or not I decide to seek additional money damages for malicious infliction of mental anguish based upon your abhorrent behavior today, will depend entirely on how you respond moving forward. By the way you misspelled Cordially, in your last email.

Good day to you mam

Rob Lauter
www.primecutpaint.com

[Quoted text hidden]



Protect Your Family From Lead In Your Home

 **EPA** United States
Environmental
Protection Agency



United States
Consumer Product
Safety Commission



United States
Department of Housing
and Urban Development

U.S. EPA Washington DC 20460
U.S. CPSC Washington DC 20207
U.S. HUD Washington DC 20410

EPA747-K-99-001
September 2001

Griffin
CX 59 Page 1 of 7

any houses and apartments built before 1978 have paint that contains high levels of lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly. Federal law requires that individuals receive certain information before renting, buying, or renovating pre-1978 housing:



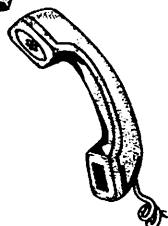
have to disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure form about lead-based paint.



have to disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure form about lead-based paint. Buyers have up to 10 days to check for lead.



have to give you this pamphlet before starting work.



on these requirements, call the National Lead Information Center at **1-800-424-LEAD (424-5323)**.

This document is in the public domain. It may be reproduced by an individual or organization without permission. Information provided in this booklet is based upon current scientific and technical understanding of the issues presented and is reflective of the jurisdictional boundaries established by the statutes governing the co-authoring agencies. Following the advice given will not necessarily provide complete protection in all situations or against all health hazards that can be caused by lead exposure.

Lead exposure can harm young children and babies even before they are born.

Even children who seem healthy can have high levels of lead in their bodies.

People can get lead in their bodies by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.

People have many options for reducing lead hazards. In most cases, lead-based paint that is in good condition is not a hazard.

Removing lead-based paint improperly can increase the danger to your family.

If you think your home might have lead hazards, read this pamphlet to learn some simple steps to protect your family.

People can get lead in their body if they:

Breathe in lead dust (especially during renovations that disturb painted surfaces).

Put their hands or other objects covered with lead dust in their mouths.

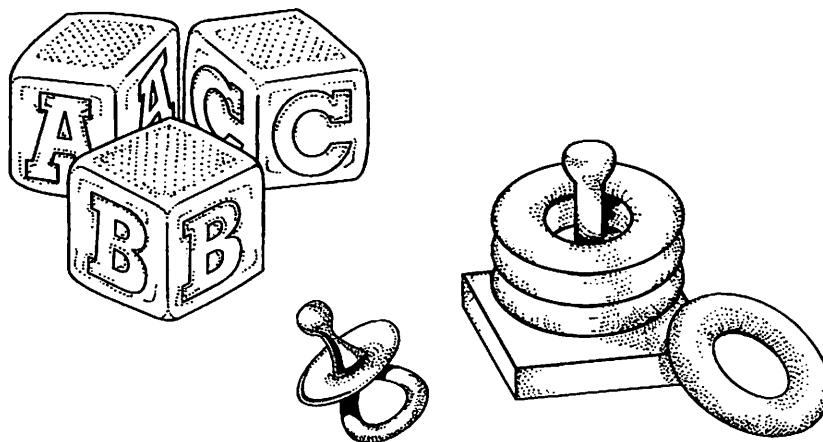
Eat paint chips or soil that contains lead.

Lead is even more dangerous to children than adults because:

Children's brains and nervous systems are more sensitive to the damaging effects of lead.

Children's growing bodies absorb more lead.

Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.



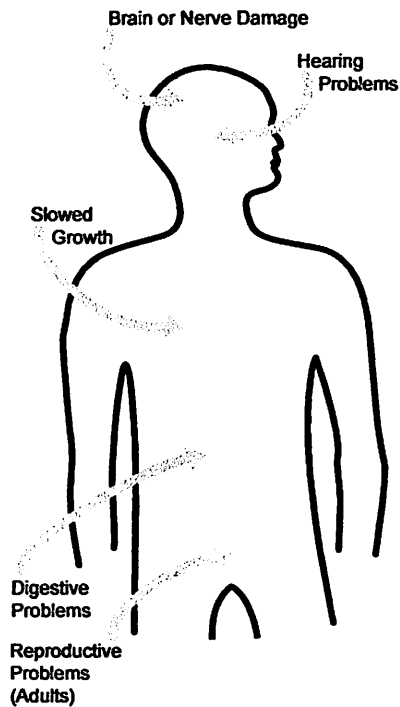
Lead's Effects

If not detected early, children with high levels of lead in their bodies can suffer from:

- Damage to the brain and nervous system
- Behavior and learning problems (such as hyperactivity)
- Slowed growth
- Hearing problems
- Headaches

Lead is also harmful to adults. Adults can suffer from:

- Difficulties during pregnancy
- Other reproductive problems (in both men and women)
- High blood pressure
- Digestive problems
- Nerve disorders
- Memory and concentration problems
- Muscle and joint pain



Many homes built before 1978 have lead-based paint. The federal government banned lead-based paint from housing in 1978. Some states stopped its use even earlier. Lead can be found:

In homes in the city, country, or suburbs.

In apartments, single-family homes, and both private and public housing.

Inside *and* outside of the house.

In soil around a home. (Soil can pick up lead from exterior paint or other sources such as past use of leaded gas in cars.)

To reduce your child's exposure to lead, get your child checked, have your home tested (especially if your home has paint in poor condition and was built before 1978), and fix any hazards you may have. Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect high levels of lead. Blood tests are usually recommended for:

Children at ages 1 and 2.

Children or other family members who have been exposed to high levels of lead.

Children who should be tested under your state or local health screening plan.

Your doctor can explain what the test results mean and if more testing will be needed.

Lead-based paint is usually not a hazard if it is in good condition, and it is not on an impact or friction surface, like a window. It is defined by the federal government as paint with lead levels greater than or equal to 1.0 milligram per square centimeter, or more than 0.5% by weight.

Deteriorating lead-based paint (peeling, chipping, chalking, cracking or damaged) is a hazard and needs immediate attention. It may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear, such as:

- Windows and window sills.

- Doors and door frames.

- Stairs, railings, banisters, and porches.

Lead dust can form when lead-based paint is dry scraped, dry sanded, or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep, or walk through it. The following two federal standards have been set for lead hazards in dust:

- 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) and higher for floors, including carpeted floors.

- 250 $\mu\text{g}/\text{ft}^2$ and higher for interior window sills.

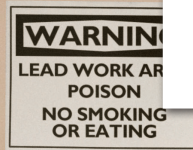
Lead in soil can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. The following two federal standards have been set for lead hazards in residential soil:

- 400 parts per million (ppm) and higher in play areas of bare soil.

- 1,200 ppm (average) and higher in bare soil in the remainder of the yard.

The only way to find out if paint, dust and soil lead hazards exist is to test for them. The next page describes the most common methods used.

THE LEAD-SAFE CERTIFIED GUIDE TO RENOVATE RIGHT



CAUTION CAUTION CAUTION CAUTION CAUTION CAUTION



1-800-424-LEAD (5323)

epa.gov/getleadsafe

EPA-740-K-10-001

Revised September 2011



This document may be purchased through the U.S. Government Printing Office online at bookstore.gpo.gov or by phone (toll-free): 1-866-512-1800.

Important lead hazard information for
families, child care providers and schools.



IT'S THE LAW!

Federal law requires contractors that disturb painted surfaces in homes, child care facilities and schools built before 1978 to be certified and follow specific work practices to prevent lead contamination. Always ask to see your contractor's certification.

Federal law requires that individuals receive certain information before renovating more than six square feet of painted surfaces in a room for interior projects or more than twenty square feet of painted surfaces for exterior projects or window replacement or demolition in housing, child care facilities and schools built before 1978.

- Homeowners and tenants: renovators must give you this pamphlet before starting work.
- Child care facilities, including preschools and kindergarten classrooms, and the families of children under six years of age that attend those facilities: renovators must provide a copy of this pamphlet to child care facilities and general renovation information to families whose children attend those facilities.



WHO SHOULD READ THIS PAMPHLET?

This pamphlet is for you if you:

- Reside in a home built before 1978.
- Own or operate a child care facility, including preschools and kindergarten classrooms, built before 1978, or
- Have a child under six years of age who attends a child care facility built before 1978.

You will learn:

- Basic facts about lead and your health.
- How to choose a contractor, if you are a property owner.
- What tenants, and parents/guardians of a child in a child care facility or school should consider.
- How to prepare for the renovation or repair job.
- What to look for during the job and after the job is done.
- Where to get more information about lead.

This pamphlet is not for:

- **Abatement projects.** Abatement is a set of activities aimed specifically at eliminating lead or lead hazards. EPA has regulations for certification and training of abatement professionals. If your goal is to eliminate lead or lead hazards, contact the National Lead Information Center at **1-800-424-LEAD (5323)** for more information.
- **“Do-it-yourself” projects.** If you plan to do renovation work yourself, this document is a good start, but you will need more information to complete the work safely. Call the National Lead Information Center at **1-800-424-LEAD (5323)** and ask for more information on how to work safely in a home with lead-based paint.
- **Contractor education.** Contractors who want information about working safely with lead should contact the National Lead Information Center at **1-800-424-LEAD (5323)** for information about courses and resources on lead-safe work practices.



RENOVATING, REPAIRING, OR PAINTING?



- Is your home, your building, or the child care facility or school your children attend being renovated, repaired, or painted?
- Was your home, your building, or the child care facility or school where your children under six years of age attend built before 1978?

If the answer to these questions is YES, there are a few important things you need to know about lead-based paint.

This pamphlet provides basic facts about lead and information about lead safety when work is being done in your home, your building or the child care facility or school your children attend.

The Facts About Lead

- Lead can affect children's brains and developing nervous systems, causing reduced IQ, learning disabilities, and behavioral problems. Lead is also harmful to adults.
- Lead in dust is the most common way people are exposed to lead. People can also get lead in their bodies from lead in soil or paint chips. Lead dust is often invisible.
- Lead-based paint was used in more than 38 million homes until it was banned for residential use in 1978.
- Projects that disturb painted surfaces can create dust and endanger you and your family. Don't let this happen to you. Follow the practices described in this pamphlet to protect you and your family.

LEAD AND YOUR HEALTH

Lead is especially dangerous to children under six years of age.

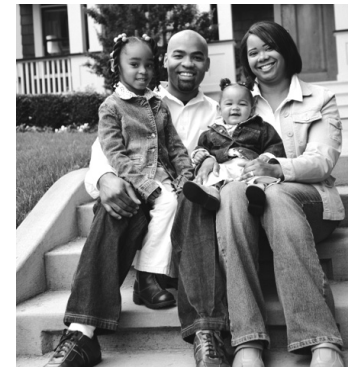
Lead can affect children's brains and developing nervous systems, causing:

- Reduced IQ and learning disabilities.
- Behavior problems.

Even children who appear healthy can have dangerous levels of lead in their bodies.

Lead is also harmful to adults. In adults, low levels of lead can pose many dangers, including:

- High blood pressure and hypertension.
- Pregnant women exposed to lead can transfer lead to their fetuses. Lead gets into the body when it is swallowed or inhaled.
- People, especially children, can swallow lead dust as they eat, play, and do other normal hand-to-mouth activities.
- People may also breathe in lead dust or fumes if they disturb lead-based paint. People who sand, scrape, burn, brush, blast or otherwise disturb lead-based paint risk unsafe exposure to lead.



What should I do if I am concerned about my family's exposure to lead?

- A blood test is the only way to find out if you or a family member already has lead poisoning. Call your doctor or local health department to arrange for a blood test.
- Call your local health department for advice on reducing and eliminating exposures to lead inside and outside your home, child care facility or school.
- Always use lead-safe work practices when renovation or repair will disturb painted surfaces.

For more information about the health effects of exposure to lead, visit the EPA lead website at [epa.gov/lead/pubs/leadinfo](https://www.epa.gov/lead/pubs/leadinfo) or call 1-800-424-LEAD (5323).

There are other things you can do to protect your family every day.

- Regularly clean floors, window sills, and other surfaces.
- Wash children's hands, bottles, pacifiers, and toys often.
- Make sure children eat a healthy, nutritious diet consistent with the USDA's dietary guidelines, that helps protect children from the effects of lead.
- Wipe off shoes before entering the house.

WHERE DOES THE LEAD COME FROM?

Dust is the main problem.

The most common way to get lead in the body is from dust. Lead dust comes from deteriorating lead-based paint and lead-contaminated soil that gets tracked into your home. This dust may accumulate to unsafe levels. Then, normal hand-to-mouth activities, like playing and eating (especially in young children), move that dust from surfaces like floors and window sills into the body.

Home renovation creates dust.

Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips.

Proper work practices protect you from the dust.

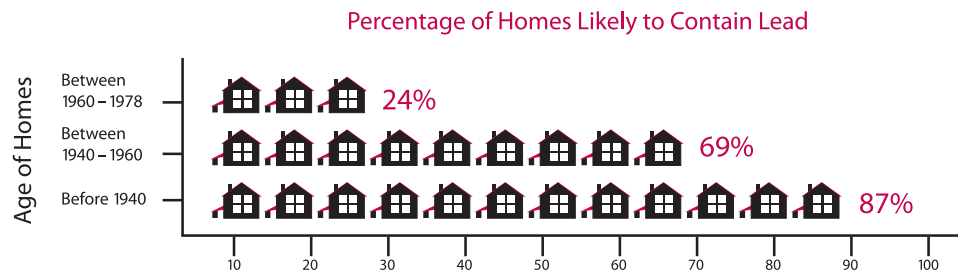
The key to protecting yourself and your family during a renovation, repair or painting job is to use lead-safe work practices such as containing dust inside the work area, using dust-minimizing work methods, and conducting a careful cleanup, as described in this pamphlet.

Other sources of lead.

Remember, lead can also come from outside soil, your water, or household items (such as lead-glazed pottery and lead crystal). Contact the National Lead Information Center at 1-800-424-LEAD (5323) for more information on these sources.



CHECKING YOUR HOME FOR LEAD-BASED PAINT



Older homes, child care facilities, and schools are more likely to contain lead-based paint.

Homes may be single-family homes or apartments. They may be private, government-assisted, or public housing. Schools are preschools and kindergarten classrooms. They may be urban, suburban, or rural.

You have the following options:

You may decide to assume your home, child care facility, or school contains lead.

Especially in older homes and buildings, you may simply want to assume lead-based paint is present and follow the lead-safe work practices described in this brochure during the renovation, repair, or painting job.

You can hire a certified professional to check for lead-based paint.

These professionals are certified risk assessors or inspectors, and can determine if your home has lead or lead hazards.

- A certified inspector or risk assessor can conduct an inspection telling you whether your home, or a portion of your home, has lead-based paint and where it is located. This will tell you the areas in your home where lead-safe work practices are needed.
- A certified risk assessor can conduct a risk assessment telling you if your home currently has any lead hazards from lead in paint, dust, or soil. The risk assessor can also tell you what actions to take to address any hazards.
- For help finding a certified risk assessor or inspector, call the National Lead Information Center at 1-800-424-LEAD (5323).

You may also have a certified renovator test the surfaces or components being disturbed for lead by using a lead test kit or by taking paint chip samples and sending them to an EPA-recognized testing laboratory. Test kits must be EPA-recognized and are available at hardware stores. They include detailed instructions for their use.

FOR PROPERTY OWNERS

You have the ultimate responsibility for the safety of your family, tenants, or children in your care.

This means properly preparing for the renovation and keeping persons out of the work area (see p. 8). It also means ensuring the contractor uses lead-safe work practices.

Federal law requires that contractors performing renovation, repair and painting projects that disturb painted surfaces in homes, child care facilities, and schools built before 1978 be certified and follow specific work practices to prevent lead contamination.

Make sure your contractor is certified, and can explain clearly the details of the job and how the contractor will minimize lead hazards during the work.

- You can verify that a contractor is certified by checking EPA's website at epa.gov/getleadSAFE or by calling the National Lead Information Center at 1-800-424-LEAD (5323). You can also ask to see a copy of the contractor's firm certification.
- Ask if the contractor is trained to perform lead-safe work practices and to see a copy of their training certificate.
- Ask them what lead-safe methods they will use to set up and perform the job in your home, child care facility or school.
- Ask for references from at least three recent jobs involving homes built before 1978, and speak to each personally.

Always make sure the contract is clear about how the work will be set up, performed, and cleaned.

- Share the results of any previous lead tests with the contractor.
- You should specify in the contract that they follow the work practices described on pages 9 and 10 of this brochure.
- The contract should specify which parts of your home are part of the work area and specify which lead-safe work practices will be used in those areas. Remember, your contractor should confine dust and debris to the work area and should minimize spreading that dust to other areas of the home.
- The contract should also specify that the contractor will clean the work area, verify that it was cleaned adequately, and re-clean it if necessary.

If you think a worker is not doing what he is supposed to do or is doing something that is unsafe, you should:

- Direct the contractor to comply with regulatory and contract requirements.
- Call your local health or building department, or
- Call EPA's hotline 1-800-424-LEAD (5323).

If your property receives housing assistance from HUD (or a state or local agency that uses HUD funds), you must follow the requirements of HUD's Lead-Safe Housing Rule and the ones described in this pamphlet.

FOR TENANTS AND FAMILIES OF CHILDREN UNDER SIX YEARS OF AGE IN CHILD CARE FACILITIES AND SCHOOLS

You play an important role ensuring the ultimate safety of your family.

This means properly preparing for the renovation and staying out of the work area (see p. 8).

Federal law requires that contractors performing renovation, repair and painting projects that disturb painted surfaces in homes built before 1978 and in child care facilities and schools built before 1978, that a child under six years of age visits regularly, to be certified and follow specific work practices to prevent lead contamination.

The law requires anyone hired to renovate, repair, or do painting preparation work on a property built before 1978 to follow the steps described on pages 9 and 10 unless the area where the work will be done contains no lead-based paint.

If you think a worker is not doing what he is supposed to do or is doing something that is unsafe, you should:

- Contact your landlord.
- Call your local health or building department, or
- Call EPA's hotline 1-800-424-LEAD (5323).

If you are concerned about lead hazards left behind after the job is over, you can check the work yourself (see page 10).



PREPARING FOR A RENOVATION

The work areas should not be accessible to occupants while the work occurs.

The rooms or areas where work is being done may need to be blocked off or sealed with plastic sheeting to contain any dust that is generated. Therefore, the contained area may not be available to you until the work in that room or area is complete, cleaned thoroughly, and the containment has been removed. Because you may not have access to some areas during the renovation, you should plan accordingly.

You may need:

- Alternative bedroom, bathroom, and kitchen arrangements if work is occurring in those areas of your home.
- A safe place for pets because they too can be poisoned by lead and can track lead dust into other areas of the home.
- A separate pathway for the contractor from the work area to the outside in order to bring materials in and out of the home. Ideally, it should not be through the same entrance that your family uses.
- A place to store your furniture. All furniture and belongings may have to be moved from the work area while the work is being done. Items that can't be moved, such as cabinets, should be wrapped in plastic.
- To turn off forced-air heating and air conditioning systems while the work is being done. This prevents dust from spreading through vents from the work area to the rest of your home. Consider how this may affect your living arrangements.

You may even want to move out of your home temporarily while all or part of the work is being done.

Child care facilities and schools may want to consider alternative accommodations for children and access to necessary facilities.



DURING THE WORK

Federal law requires contractors that are hired to perform renovation, repair and painting projects in homes, child care facilities, and schools built before 1978 that disturb painted surfaces to be certified and follow specific work practices to prevent lead contamination.

The work practices the contractor must follow include these three simple procedures, described below:

1. Contain the work area. The area must be contained so that dust and debris do not escape from that area. Warning signs must be put up and plastic or other impermeable material and tape must be used as appropriate to:

- Cover the floors and any furniture that cannot be moved.
- Seal off doors and heating and cooling system vents.
- For exterior renovations, cover the ground and, in some instances, erect vertical containment or equivalent extra precautions in containing the work area.

These work practices will help prevent dust or debris from getting outside the work area.

2. Avoid renovation methods that generate large amounts of lead-contaminated dust.

Some methods generate so much lead-contaminated dust that their use is prohibited.

They are:

- Open flame burning or torching.
- Sanding, grinding, planing, needle gunning, or blasting with power tools and equipment not equipped with a shroud and HEPA vacuum attachment.
- Using a heat gun at temperatures greater than 1100°F.



There is no way to eliminate dust, but some renovation methods make less dust than others. Contractors may choose to use various methods to minimize dust generation, including using water to mist areas before sanding or scraping; scoring paint before separating components; and prying and pulling apart components instead of breaking them.

3. Clean up thoroughly. The work area should be cleaned up daily to keep it as clean as possible. When all the work is done, the area must be cleaned up using special cleaning methods before taking down any plastic that isolates the work area from the rest of the home. The special cleaning methods should include:

- Using a HEPA vacuum to clean up dust and debris on all surfaces, followed by
- Wet wiping and wet mopping with plenty of rinse water.

When the final cleaning is done, look around. There should be no dust, paint chips, or debris in the work area. If you see any dust, paint chips, or debris, the area must be re-cleaned.

FOR PROPERTY OWNERS: AFTER THE WORK IS DONE

When all the work is finished, you will want to know if your home, child care facility, or school where children under six attend has been cleaned up properly.

EPA Requires Cleaning Verification.

In addition to using allowable work practices and working in a lead-safe manner, EPA's RRP rule requires contractors to follow a specific cleaning protocol. The protocol requires the contractor to use disposable cleaning cloths to wipe the floor and other surfaces of the work area and compare these cloths to an EPA-provided cleaning verification card to determine if the work area was adequately cleaned. EPA research has shown that following the use of lead-safe work practices with the cleaning verification protocol will effectively reduce lead-dust hazards.

Lead-Dust Testing.

EPA believes that if you use a certified and trained renovation contractor who follows the LRRP rule by using lead-safe work practices and the cleaning protocol after the job is finished, lead-dust hazards will be effectively reduced. If, however, you are interested in having lead-dust testing done at the completion of your job, outlined below is some helpful information.

What is a lead-dust test?

- Lead-dust tests are wipe samples sent to a laboratory for analysis. You will get a report specifying the levels of lead found after your specific job.

How and when should I ask my contractor about lead-dust testing?

- Contractors are not required by EPA to conduct lead-dust testing. However, if you want testing, EPA recommends testing be conducted by a lead professional. To locate a lead professional who will perform an evaluation near you, visit EPA's website at epa.gov/lead/pubs/locate or contact the National Lead Information Center at **1-800-424-LEAD (5323)**.
- If you decide that you want lead-dust testing, it is a good idea to specify in your contract, before the start of the job, that a lead-dust test is to be done for your job and who will do the testing, as well as whether re-cleaning will be required based on the results of the test.
- You may do the testing yourself. If you choose to do the testing, some EPA-recognized lead laboratories will send you a kit that allows you to collect samples and send them back to the laboratory for analysis. Contact the National Lead Information Center for lists of EPA-recognized testing laboratories.



FOR ADDITIONAL INFORMATION

You may need additional information on how to protect yourself and your children while a job is going on in your home, your building, or child care facility.

The National Lead Information Center at **1-800-424-LEAD (5323)** or epa.gov/lead/nlic can tell you how to contact your state, local, and/or tribal programs or get general information about lead poisoning prevention.

- State and tribal lead poisoning prevention or environmental protection programs can provide information about lead regulations and potential sources of financial aid for reducing lead hazards. If your state or local government has requirements more stringent than those described in this pamphlet, you must follow those requirements.
- Local building code officials can tell you the regulations that apply to the renovation work that you are planning.
- State, county, and local health departments can provide information about local programs, including assistance for lead-poisoned children and advice on ways to get your home checked for lead.

The National Lead Information Center can also provide a variety of resource materials, including the following guides to lead-safe work practices. Many of these materials are also available at epa.gov/lead/pubs/brochure

- Steps to Lead Safe Renovation, Repair and Painting.
- Protect Your Family from Lead in Your Home
- Lead in Your Home: A Parent's Reference Guide



For the hearing impaired, call the Federal Information Relay Service at 1-800-877-8339 to access any of the phone numbers in this brochure.

EPA CONTACTS

EPA Regional Offices

EPA addresses residential lead hazards through several different regulations. EPA requires training and certification for conducting abatement and renovations, education about hazards associated with renovations, disclosure about known lead paint and lead hazards in housing, and sets lead-paint hazard standards.

Your Regional EPA Office can provide further information regarding lead safety and lead protection programs at epa.gov/lead.

Region 1

(Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)
Regional Lead Contact
U.S. EPA Region 1
Suite 1100
One Congress Street
Boston, MA 02114-2023
(888) 372-7341

Region 2

(New Jersey, New York, Puerto Rico, Virgin Islands)
Regional Lead Contact
U.S. EPA Region 2
2890 Woodbridge Avenue
Building 205, Mail Stop 225
Edison, NJ 08837-3679
(732) 321-6671

Region 3

(Delaware, Maryland, Pennsylvania, Virginia, Washington, DC, West Virginia)
Regional Lead Contact
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-5000

Region 4

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
Regional Lead Contact
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960
(404) 562-9900

Region 5

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
Regional Lead Contact
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507
(312) 886-6003

Region 6

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
Regional Lead Contact
U.S. EPA Region 6
1445 Ross Avenue,
12th Floor
Dallas, TX 75202-2733
(214) 665-7577

Region 7

(Iowa, Kansas, Missouri, Nebraska)
Regional Lead Contact
U.S. EPA Region 7
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7003

Region 8

(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
Regional Lead Contact
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202
(303) 312-6312

Region 9

(Arizona, California, Hawaii, Nevada)
Regional Lead Contact
U.S. Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-8021

Region 10

(Alaska, Idaho, Oregon, Washington)
Regional Lead Contact
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101-1128
(206) 553-1200

OTHER FEDERAL AGENCIES

CPSC

The Consumer Product Safety Commission (CPSC) protects the public from the unreasonable risk of injury or death from 15,000 types of consumer products under the agency's jurisdiction. CPSC warns the public and private sectors to reduce exposure to lead and increase consumer awareness. Contact CPSC for further information regarding regulations and consumer product safety.

CPSC

4330 East West Highway
Bethesda, MD 20814
Hotline 1-(800) 638-2772
cpsc.gov

CDC Childhood Lead Poisoning Prevention Branch

The Centers for Disease Control and Prevention (CDC) assists state and local childhood lead poisoning prevention programs to provide a scientific basis for policy decisions, and to ensure that health issues are addressed in decisions about housing and the environment. Contact CDC Childhood Lead Poisoning Prevention Program for additional materials and links on the topic of lead.

CDC Childhood Lead Poisoning Prevention Branch

4770 Buford Highway, MS F-40
Atlanta, GA 30341
(770) 488-3300
cdc.gov/nceh/lead

HUD Office of Healthy Homes and Lead Hazard Control

The Department of Housing and Urban Development (HUD) provides funds to state and local governments to develop cost-effective ways to reduce lead-based paint hazards in America's privately-owned low-income housing. In addition, the office enforces the rule on disclosure of known lead paint and lead hazards in housing, and HUD's lead safety regulations in HUD-assisted housing, provides public outreach and technical assistance, and conducts technical studies to help protect children and their families from health and safety hazards in the home. Contact the HUD Office of Healthy Homes and Lead Hazard Control for information on lead regulations, outreach efforts, and lead hazard control research and outreach grant programs.

U.S. Department of Housing and Urban Development

Office of Healthy Homes and Lead Hazard Control
451 Seventh Street, SW, Room 8236
Washington, DC 20410-3000
HUD's Lead Regulations Hotline
(202) 402-7698
hud.gov/offices/lead/



SAMPLE PRE-RENOVATION FORM

This sample form may be used by renovation firms to document compliance with the Federal pre-renovation education and renovation, repair, and painting regulations.

Occupant Confirmation

Pamphlet Receipt

- ☐ I have received a copy of the lead hazard information pamphlet informing me of the potential risk of the lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

Printed Name of Owner-occupant

Signature of Owner-occupant

Signature Date

Renovator's Self Certification Option (for tenant-occupied dwellings only)

Instructions to Renovator: If the lead hazard information pamphlet was delivered but a tenant signature was not obtainable, you may check the appropriate box below.

- ☐ **Declined** – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below at the date and time indicated and that the occupant declined to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit with the occupant.
- ☐ **Unavailable for signature** – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below and that the occupant was unavailable to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door or by (fill in how pamphlet was left).

Printed Name of Person Certifying Delivery

Attempted Delivery Date

Signature of Person Certifying Lead Pamphlet Delivery

Unit Address

Note Regarding Mailing Option — As an alternative to delivery in person, you may mail the lead hazard information pamphlet to the owner and/or tenant. Pamphlet must be mailed at least seven days before renovation. Mailing must be documented by a certificate of mailing from the post office.

PENALTY CALCULATION WORKSHEET

**Prime Cut Paint
1414 Baychester Avenue
Norfolk, VA 23503**

Renovations at issue:

ADDRESS	YEAR BUILT	CONTRACT DATE	SCOPE OF WORK (Portion which is RRP-related)
114 S. Broad St. Suffolk, VA 23434	1906	7/20/19	Pressure washing of exterior, scraping and painting of entire exterior. > 20 ft ² of exterior paint disturbed. Child between the ages of 6 and 18 present.
238 Mt. Vernon Ave. Portsmouth, VA 23707	1910	6/10/19	Scraping, sanding, and painting of exterior surfaces. > 20 ft ² of exterior paint disturbed.
3716 Northmoor Ct. Virginia Beach, VA 23452	1975	4/19/19	Painting of numerous walls of the property interior. > 6 ft ² of interior paint disturbed.
3403 Broadway St. Portsmouth, VA 23703	1955	9/12/19	Painting of interior walls and trim. > 6 ft ² of exterior paint disturbed. Child between the ages of 6 and 18 present.

Note: The gravity-based penalty was calculated in accordance with *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 2010 (ERPP). Based on the dates of the contracts referenced above and when the violations were assessed, the inflation adjustment factor corresponding to violations occurring after November 2, 2015 and assessed after January 15, 2018 was applied to the violations regarding all four (4) contracts in this case. All contracts are dated after November 2, 2015. According to the information collected by the inspector, at least one child between the ages of 6 and 18 resided at the 114 S. Broad Street property and the 3403 Broadway Street property. Thus, the violations associated with these two

properties will be assessed a Significant extent level. The firm representative did not recall whether any children resided at the other two properties. Thus, the violations associated with these other two properties will be assessed a Minor extent level. The firm certification violation will also be assessed a Minor extent level. The penalty, as calculated by the ERPP, is as follows:

Potential Firm Certification Violation

- One (1) potential violation of 40 C.F.R. § 745.89(b) and 40 C.F.R. § 745.81(a)(2)(ii) – Failure to obtain initial EPA firm certification to performing renovations on pre-1978 properties for compensation. Circumstance Level 3a, Minor extent; Penalty = **\$4,667.**

Potential Renovator Certification Violations

- Four (4) potential violations of 40 C.F.R. § 745.89(d)(2) – Failure to ensure that certified renovators were assigned to the renovation. Circumstance Level 3a, Significant extent (2 renovations); Minor extent (2 renovations) ; Penalty = $(\$15,868 \times 2) + (\$4,667 \times 2) =$ **\$41,070.**

Potential Information Distribution Requirements Violations

- Four (4) potential violations of 40 C.F.R. § 745.84(a)(1) – Failure to distribute to the property owner a copy of EPA's *Renovate Right* pamphlet prior to the renovation work. Circumstance Level 1b, Significant extent (2 renovations); Minor extent (2 renovations); Penalty = $(\$12,240 \times 2) + (\$4,080 \times 2) =$ **\$32,640.**

Potential Recordkeeping Violations

- Four (4) potential violations of 40 C.F.R. § 745.86(b)(6) – Failure to make available to EPA all records necessary to demonstrate that the renovator performed all of the lead-safe work practices described in 40 C.F.R. § 745.85(a), as well as the post-renovation cleaning procedures described in 40 C.F.R. § 745.85(b). Circumstance Level 6a, Significant extent (2 renovations); Minor extent (2 renovations); Penalty = $(\$2,116 \times 2) + (\$622 \times 2) =$ **\$5,476.**

Potential Work Practice Violations (114 S. Broadway St. renovation only)

- One (1) potential violation of 40 C.F.R. § 745.85(a)(1) – Failure to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area. Circumstance Level 1b, Significant Extent; Penalty = **\$12,240.**

- One (1) potential violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) – Failure by the firm, before beginning the renovation, to cover the ground with plastic sheeting or other impermeable material in the work area extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the falling debris, whichever is greater. Circumstance Level 2a, Significant Extent; Penalty = **\$21,157.**

TOTAL GRAVITY-BASED PENALTY = \$4,667 + \$41,070 + \$32,640 + \$5,476 + \$12,240 + \$21,157 = **\$117,250.**

Disclaimer:

The software and information ("Services") accessed herein were developed exclusively at private expense, and are proprietary to Dun & Bradstreet, Inc., and its affiliates and subsidiaries (collectively, "D&B"), and may include copyrighted works, trade secrets, or other materials created by D&B at great effort and expense.

If the Customer accessing the Services is part of the executive, legislative or judicial branches of the U.S. Federal Government, the Services contained herein are a Commercial Item as that term is defined in FAR 2.101, and are comprised of Technical Data, Computer Software and Computer Software Documentation as those terms are defined in FAR 52.227-14(a) and DFAR 252.227-13.

Customer's rights to use the Services are as described in the government contract signed between D&B and the Government

Under no circumstances will the Customer accessing the Services have greater rights in the Services provided hereunder than "Limited Rights" as that term is defined in FAR 52.227-14 (ALT II) and DFAR 252.227-7013(f) and "Restricted Rights" as that term is defined in FAR 52.227-14 (ALT III) and DFAR 252.227-7014(f), respectively.

LIVE REPORT

Currency: Shown in USD unless otherwise indicated 

PRIME CUT PAINT

Trade Names: No trade names for this company.

ACTIVE SINGLE LOCATION

D-U-N-S 07-506-7023

Number:

Company: PRIME CUT PAINT

D&B Address

Address: 1414 BAYCHESTER AVENUE
NORFOLK, VA, US - 23503

Location SINGLE LOCATION

Type:

Phone: 757-305-2040

Fax:

Web:

Added to Portfolio: 08/26/2019
Endorsement: ruge.paul@epa.gov
Last View Date: 08/26/2019

Company Summary

SCORE BAR

PAYDEX®	UNAVAILABLE			
Commercial Credit Score Percentile	<div><div></div><div></div><div>55</div><div></div><div></div></div> <div>Moderate Risk of severe payment delinquency.</div>			
Financial Stress Score National Percentile	<div><div></div><div></div><div>44</div><div></div><div></div></div> <div>Moderate Risk of severe financial stress.</div>			
D&B Viability Rating	<div><div>6</div><div>6</div><div>E</div><div>R</div></div> <div>View More Details</div>			
Bankruptcy Found	<div><div></div>No</div>			
D&B Rating	<div>DS</div> <div>The information available does not permit us to classify the company.</div>			

D&B COMPANY OVERVIEW

This is a single location

Age (Year Started)	Employees	SIC
2 years (2017)	UNDETERMINED (Here)	5231
Line of business	NAICS	
Ret paint/glass/wallpaper	444120	

COMMERCIAL CREDIT SCORE CLASS



FINANCIAL STRESS SCORE CLASS



Detailed Trade Risk Insight™

Detailed Trade Risk Insight provides detailed updates on over 1.5 billion commercial trade experiences collected from more than 260 million unique supplier/purchaser relationships.

DAYS BEYOND TERMS - PAST 3 & 12 MONTHS

There is not sufficient reported trading activity to generate 3 month Days Beyond Terms (a minimum of 3 trade experiences from at least 2 companies).

There is not sufficient reported trading activity to generate 12 month Days Beyond Terms (a minimum of 3 trade experiences from at least 2 companies).

DEROGATORY EVENTS LAST MONTHS FROM TO

No Derogatory trade Event has been reported on this company for the past 13 Months

TOTAL AMOUNT CURRENT AND PAST DUE - MONTH TREND FROM TO

Status

Total

Current

1-30 Days Past Due

31-60 Days Past Due

61-90 Days Past Due

91+ Days Past Due

Predictive Scores

D&B VIABILITY RATING SUMMARY

The D&B Viability Rating uses D&B's proprietary analytics to compare the most predictive business risk indicators and deliver a highly reliable assessment of the probability that a company will go out of business, become dormant/inactive, or file for bankruptcy/insolvency within the next 12 months. The D&B Viability Rating is made up of 4 components:

Viability Score

Compared to All US Businesses within the D&B Database:

- Level of Risk: **Moderate Risk**
- Businesses ranked **6** have a probability of becoming no longer viable: **13 %**
- Percentage of businesses ranked **6**: **30 %**
- Across all US businesses, the average probability of becoming no longer viable: **14 %**



Portfolio Comparison

Compared to All US Businesses within the same MODEL SEGMENT:

- Model Segment : **Limited Trade Payments**
- Level of Risk: **Moderate Risk**
- Businesses ranked **6** within this model segment have a probability of becoming no longer viable: **13 %**
- Percentage of businesses ranked **6** with this model segment: **25 %**
- Within this model segment, the average probability of becoming no longer viable: **11 %**



Data Depth Indicator

Data Depth Indicator:

- ✓ Rich Firmographics
- ✓ Sparse Commercial Trading Activity
- ✗ No Financial Attributes

Greater data depth can increase the precision of the D&B Viability Rating assessment.

To help improve the current data depth of this company, you can ask D&B to make a personalized request to this company on your behalf to obtain its latest financial information. To make the request, click the link below. Note, the company must be saved to a folder before the request can be made.

Request Financial Statements

Reference the FINANCIALS tab for this company to monitor the status of your request.



Company Profile:

Company Profile Details:

- Financial Data: **Not Available**
- Trade Payments: **Available: 1-2 Trade**
- Company Size: **Small: Employees: <10 and Sales: <\$10K or Missing**
- Years in Business: **Young: <5**

R

Financial Data	Trade Payments	Company Size	Years in Business
Not Available	Available: 1-2 Trade	Small	Young

CREDIT CAPACITY SUMMARY

This credit rating was assigned because of D&B's assessment of the company's creditworthiness. For more information, see the

D&B Rating Key

D&B Rating: DS

The DS rating indicates that the information available does not permit D&B to classify the company within our rating key.

Number of Employees Total:

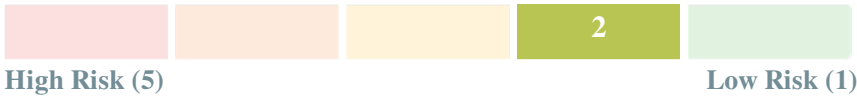
Payment Activity	(based on 1 experiences)
Average High Credit:	\$1,000
Highest Credit:	\$1,000
Total Highest Credit:	\$1,000

D&B CREDIT LIMIT RECOMMENDATION

Conservative credit Limit: 2,500

Aggressive credit Limit: 10,000

Risk category for this business: LOW TO MODERATE



The Credit Limit Recommendation (CLR) is intended to serve as a directional benchmark for all businesses within the same line of business or industry, and is not calculated based on any individual business. Thus, the CLR is intended to help guide the credit limit decision, and must be balanced in combination with other elements which reflect the individual company's size, financial strength, payment history, and credit worthiness, all of which can be derived from D&B reports.

Risk is assessed using D&Bs scoring methodology and is one factor used to create the recommended limits. See Help for details.

FINANCIAL STRESS CLASS SUMMARY

The Financial Stress Score predicts the likelihood of a firm ceasing business without paying all creditors in full, or reorganization or obtaining relief from creditors under state/federal law over the next 12 months. Scores were calculated using a statistically valid model derived from D&B's extensive data files.

The Financial Stress Class of 3 for this company shows that firms with this class had a failure rate of 0.24% (24 per 10,000), which is lower than the average of businesses in D & B's database

Financial Stress Class :



Moderately lower than average risk of severe financial stress, such as a bankruptcy or going out of business with unpaid debt, over the next 12 months.

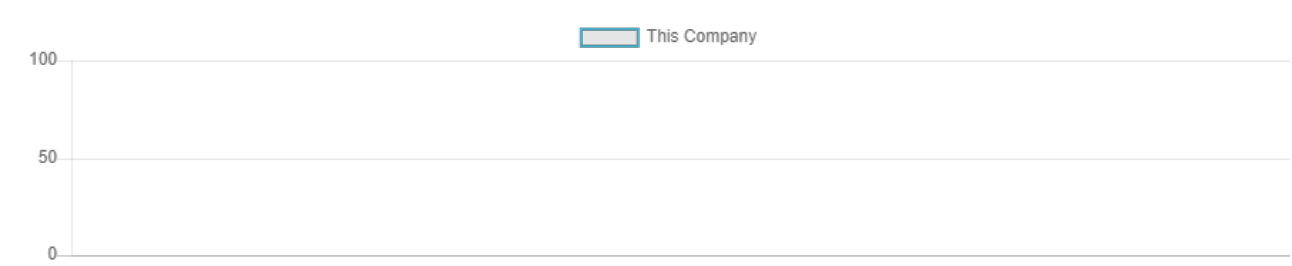
Probability of Failure:

- Risk of Severe Financial Stress for Businesses with this Class: **0.24%** (24 per 10,000)
- Financial Stress National Percentile : **44** (Highest Risk: 1; Lowest Risk: 100)
- Financial Stress Score : **1471** (Highest Risk: 1,001; Lowest Risk: 1,875)
- Average Risk of Severe Financial Stress for Businesses in D&B database: **0.48%** (48 per 10,000)

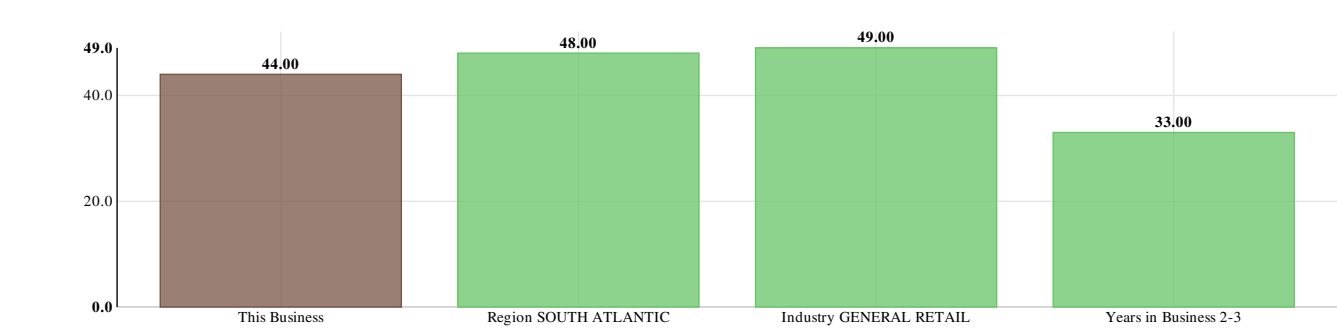
The Financial Stress Class of this business is based on the following factors:

- Limited time in business

Financial Stress Percentile Trend:



- Notes:**
- The Financial Stress Class indicates that this firm shares some of the same business and financial characteristics of other companies with this classification. It does not mean the firm will necessarily experience financial stress.
 - The Probability of Failure shows the percentage of firms in a given Class that discontinued operations over the past year with loss to creditors. The Probability of Failure - National Average represents the national failure rate and is provided for comparative purposes.
 - The Financial Stress National Percentile reflects the relative ranking of a company among all scorable companies in D&B's file.
 - The Financial Stress Score offers a more precise measure of the level of risk than the Class and Percentile. It is especially helpful to customers using a scorecard approach to determining overall business performance.



Norms	National %
This Business	44
Region: SOUTH ATLANTIC	48
Industry: GENERAL RETAIL	49
Employee range:	UN
Years in Business: 2-3	33

This Business has a Financial Stress Percentile that shows:

- Higher risk than other companies in the same region.
- Higher risk than other companies in the same industry.
- Lower risk than other companies with a comparable number of years in business.

CREDIT SCORE SUMMARY

The Commercial Credit Score (CCS) predicts the likelihood of a business paying its bills in a severely delinquent manner (91 days or more past terms).

The Credit Score class of 3 for this company shows that 5.8% of firms with this class paid one or more bills severely delinquent, which is lower than the average of businesses in D & B's database.

Credit Score Class :



Moderate risk of severe payment delinquency over next 12 months.

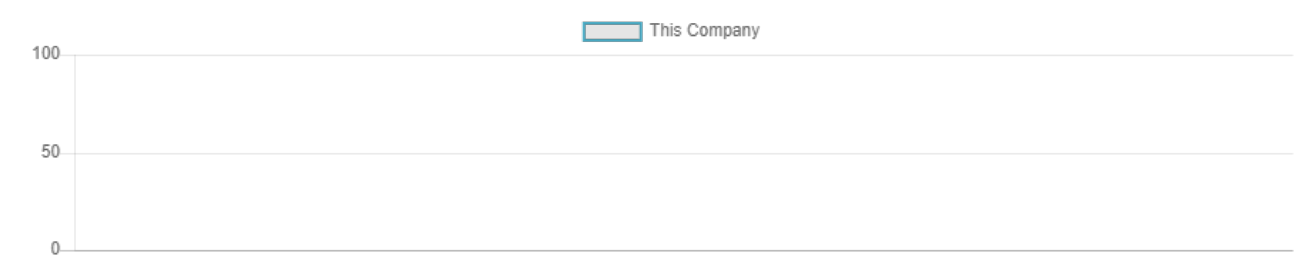
Incidence of Delinquent Payment

- Among Companies with this Classification: **5.80%**
- Average compared to businesses in D&B's database: **10.20%**
- Credit Score Percentile : **55** (Highest Risk: 1; Lowest Risk: 100)
- Credit Score : **505** (Highest Risk: 101; Lowest Risk: 670)

The Credit Score Class of this business is based on the following factors:

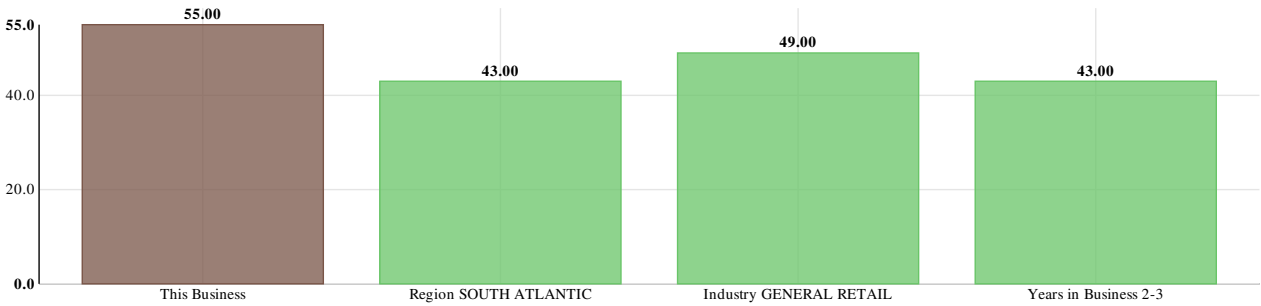
- Higher risk industry based on delinquency rates for this industry
- Limited number of satisfactory payment experiences
- Higher risk region based on delinquency rates for this region
- Limited time under present management control
- Limited business activity signals reported in the past 12 months
- Decreasing trend in reported number of payment experiences

Credit Score Class Percentile Trend:



Notes

- The Commercial Credit Score Risk Class indicates that this firm shares some of the same business and financial characteristics of other companies with this classification. It does not mean the firm will necessarily experience severe delinquency.
- The Incidence of Delinquent Payment is the percentage of companies with this classification that were reported 91 days past due or more by creditors. The calculation of this value is based on D&B's trade payment database.
- The Commercial Credit Score percentile reflects the relative ranking of a firm among all scorable companies in D&B's file.
- The Commercial Credit Score offers a more precise measure of the level of risk than the Risk Class and Percentile. It is especially helpful to customers using a scorecard approach to determining overall business performance.



Norms	National %
This Business	55
Region: SOUTH ATLANTIC	43
Industry: GENERAL RETAIL	49
Employee range:	UN
Years in Business: 2-3	43

This business has a Credit Score Percentile that shows:

- Lower risk than other companies in the same region.
- Lower risk than other companies in the same industry.
- Lower risk than other companies with a comparable number of years in business.

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Trade Payments

D&B PAYDEX®

The D&B PAYDEX is a unique, weighted indicator of payment performance based on payment experiences as reported to D&B by trade references. Learn more about the D&B PAYDEX

Timeliness of historical payments for this company.

Current PAYDEX	Payments Within Terms	Average High Credit
Unavailable	N/A	\$1,000
Equal to terms (of 2 days beyond terms)	Total payment Experiences in D&Bs File (HQ) 1	Largest High Credit \$1,000
Industry Median 79	Trade Experiences with Slow or Negative Payments(%) 0%	Highest Now Owing \$0
Equal to 2 days beyond terms	Total Placed For Collection 0	Highest Past Due \$0
Payment Trend Unavailable		
Compared to payments three months ago		
Indications of slowness can be the result of dispute over merchandise, skipped invoices etc. Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.		

D&B PAYDEX

3-MONTH D&B PAYDEX

1100

120 Days Slow30 day slowPrompt

When weighted by amount, payments to suppliers average terms

☐ High risk of late payment (Average 30 to 120 days beyond terms)

☐ Medium risk of late payment (Average 30 days or less beyond terms)

☐ Low risk of late payment (Average prompt to 30+ days sooner)

1100

120 Days Slow30 day slowPrompt

Based on payments collected over last 3 months.

When weighted by amount, payments to suppliers average days beyond terms

☐ High risk of late payment (Average 30 to 120 days beyond terms)

☐ Medium risk of late payment (Average 30 days or less beyond terms)

☐ Low risk of late payment (Average prompt to 30+ days sooner)

PAYMENT HABITS

For all payment experiences within a given amount of credit extended, shows the percent that this Business paid within terms. Provides number of experiences to calculate the percentage, and the total credit value of the credit extended.

Credit Extended	Payment Experiences	Total Amount	% of Payments Within Terms
Over 100,000			<div></div>
50,000-100,000			<div></div>
15,000-49,999			<div></div>
5,000-14,999			<div></div>
1,000-4,999			<div></div>
Under 1,000			<div></div>

Based on payments collected over last 24 months.

Payment experiences reflect how bills are paid in relation to the terms granted. In some instances, payment beyond terms can be the result of disputes over merchandise, skipped invoices, etc.

PAYMENT SUMMARY

There are 1 payment experience(s) in D&Bs file for the most recent 24 months, with 1 experience(s) reported during the last three month period. The highest Now Owes on file is 0 . The highest Past Due on file is 0
Below is an overview of the company's currency-weighted payments, segmented by it's supplier's primary industries:

Top Industries	Total Revd (#)	Total Amount	Largest High Credit	Within Terms (%)	1 - 30 Days Late (%)	31 - 60 Days Late (%)	61 - 90 Days Late (%)	91 + Days Late (%)
Natnl commercial bank	1	1,000	1,000	100	0	0	0	0

Other payment categories

Cash experiences	0	\$0	\$0
Payment record unknown	0	\$0	\$0
Unfavorable comments	0	\$0	\$0
Placed for collections	0	\$0	\$0
Total in D&B's file	1	\$1,000	\$1,000

Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

Indications of slowness can be result of dispute over merchandise, skipped invoices, etc.

DETAILED PAYMENT HISTORY FOR THIS COMPANY

Date Reported (mm/yy)	Paying Record	High Credit	Now Owes	Past Due	Selling Terms	Last Sale Within (month)
07/19	Ppt	1,000	0	0		6-12 mos

Payments Detail Key: ■ 30 or more days beyond terms

Payment experiences reflect how bills are paid in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices, etc. Each experience shown is from a separate supplier. Updated trade experiences replace those previously reported

Public Filings

SUMMARY

A check of D&B's public records database indicates that no filings were found for PRIME CUT PAINTat 1414 Baychester Avenue, Norfolk VA.

D&B's extensive database of public record information is updated daily to ensure timely reporting of changes and additions. It includes business-related suits, liens, judgments, bankruptcies, UCC financing statements and business registrations from every state and the District of Columbia, as well as select filing types from Puerto Rico and the U.S. Virgin Islands.

D&B collects public records through a combination of court reporters, third parties and direct electronic links with federal and local authorities. Its database of U.S. business-related filings is now the largest of its kind.

The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

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History & Operations

COMPANY OVERVIEW

Company Name	Phone	Present management control
PRIME CUT PAINT	757 305-2040	2 years
Street Address		
1414 Baychester Avenue Norfolk, VA		
23503		

HISTORY

The following information was reported 08/24/2019

Business started 2017.

OPERATIONS

08/24/2019

Description:

- Retails paint.
- Territory : Local.

Employees: UNDETERMINED.

Facilities: Occupies premises in building.

Subsidiaries:

SIC & NAICS

SIC:

Based on information in our file, D&B has assigned this company an extended 8-digit SIC. D&B's use of 8-digit SICs enables us to be more specific about a company's operations than if we use the standard 4-digit code.

The 4-digit SIC numbers link to the description on the Occupational Safety & Health Administration (OSHA) Web site. Links open in a new browser window.

- 5231 0201 Paint

NAICS:

- 444120 Paint and Wallpaper Stores

Financials

COMPANY FINANCIALS

D&B

Graph cannot be created

ADDITIONAL FINANCIAL DATA

REQUEST FINANCIALS STATEMENTS

You can ask D&B to make a personalized request to this company on your behalf to obtain its latest financial information by clicking the button below.

<input type="checkbox"/>	Financial Date Requested	Requested Period	Requested Year	Requested By	Received Date	Status
--------------------------	--	----------------------------------	--------------------------------	------------------------------	-------------------------------	------------------------

No data found

The requested financials below were provided by PRIME CUT PAINT and are not DUNSRight certified.

KEY BUSINESS RATIOS

D & B has been unable to obtain sufficient financial information from this company to calculate business ratios. Our check of additional outside sources also found no information available on its financial performance.

To help you in this instance, ratios for other firms in the same industry are provided below to support your analysis of this business.

Based on this Number of Establishments : 97

Industry Norms Based On 97 Establishments

	This Business	Industry Median	Industry Quartile
Profitability			
Return on Sales %	UN	2.1	UN
Return on Net Worth %	UN	5.8	UN
Short Term Solvency			
Current Ratio	UN	3.1	UN
Quick Ratio	UN	1.1	UN
Efficiency			
Assets to Sale %	UN	45.4	UN
Sales/Net Working Capital	UN	4.9	UN
Utilization			
Total Liabilities / Net Worth %	UN	47.7	UN
UN = Unavailable			

Spread Financials

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Your Information

Record additional information about this company to supplement the D&B information.

Note: Information entered in this section will not be added to D&B's central repository and will be kept private under your user ID. Only you will be able to view the information.

Account Number	Endorsement/Billing Reference *	Sales Representatives
	ruge.paul@epa.gov	
Credit Limit	Total Outstanding	
\$0.00	\$0.00	

View Snapshots

Type	Company Name & Address	Date Created	Saved By
No data found			

Disclaimer:

The software and information ("Services") accessed herein were developed exclusively at private expense, and are proprietary to Dun & Bradstreet, Inc., and its affiliates and subsidiaries (collectively, "D&B"), and may include copyrighted works, trade secrets, or other materials created by D&B at great effort and expense.

If the Customer accessing the Services is part of the executive, legislative or judicial branches of the U.S. Federal Government, the Services contained herein are a Commercial Item as that term is defined in FAR 2.101, and are comprised of Technical Data, Computer Software and Computer Software Documentation as those terms are defined in FAR 52.227-14(a) and DFAR 252.227-13.

Customer's rights to use the Services are as described in the government contract signed between D&B and the Government

Under no circumstances will the Customer accessing the Services have greater rights in the Services provided hereunder than "Limited Rights" as that term is defined in FAR 52.227-14 (ALT II) and DFAR 252.227-7013(f) and "Restricted Rights" as that term is defined in FAR 52.227-14 (ALT III) and DFAR 252.227-7014(f), respectively.



**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

August, 2010

[Revised 4/05/2013]

**United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office of Civil Enforcement
Waste and Chemical Enforcement Division**



Section 1: Introduction, Overview and Background

Introduction	2
Overview	2
Background	3

Section 2: Determining the Level of Enforcement Response

Civil Administrative Complaints	4
Notices of Noncompliance.....	5
Civil Judicial Referrals	6
Criminal Proceedings.....	6
Parallel Criminal and Civil Proceedings.....	6

Section 3: Assessing Civil Administrative Penalties

Computation of the Penalty	8
Independently Assessable Violations	10
Economic Benefit of Noncompliance	11
Gravity-Based Penalty	14
Nature.....	14
Circumstance.....	15
Extent	16
Modification of the Penalty	17
Degree of Culpability.....	18
History of Prior Violations.....	18
Ability to Pay/Continue in Business	20
Other Factors as Justice May Require	23
Voluntary Disclosures.....	23
Attitude	24
Special Circumstances/Extraordinary Adjustments.....	24
Adjusting Proposed Penalties in Settlement	25
Factual Changes	25
Remittance of Penalties.....	25
Supplemental Environmental Projects (SEPs).....	26

APPENDICES

Appendix A: Violations and Circumstance Levels.....	A1 – A10
Appendix B: Gravity-Based Penalty Matrices.....	B1 – B3
Appendix C: Internet References for Policy Documents	C1
Appendix D: List of Supplemental Environmental Projects (SEPs)	D1

I. Introduction

This document sets forth guidance for the U.S. Environmental Protection Agency (EPA or the Agency) to use in determining the appropriate enforcement response and penalty amount for violations of Title IV of the Toxic Substances Control Act (TSCA) which gives the Agency the authority to address lead-based paint (LBP) and LBP hazards in target housing, and other buildings and structures. The goal of this consolidated Enforcement Response and Penalty Policy (ERPP) is to provide fair and equitable treatment of the regulated community, predictable enforcement responses, and comparable penalty assessments for comparable violations, with flexibility to allow for individual facts and circumstances of a particular case. The Renovation, Repair, and Painting Rule (RRP Rule),¹ Pre-Renovation Education Rule (PRE Rule),² and Lead-Based Paint Activities, Certification, and Training Rule (LBP Activities Rule)³ were each promulgated under the authority of Title IV of TSCA and are addressed in this ERPP.⁴

This guidance applies only to violations of EPA's civil regulatory programs. It does not apply to enforcement pursuant to criminal provisions of laws or regulations that are enforced by EPA. The procedures set forth in this document are intended solely for the guidance of government professionals. They are not intended and cannot be relied on to create rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this policy and to change it at any time without public notice. This policy is not binding on the Agency. Enforcement staff should continue to make appropriate case-by-case enforcement judgments, guided by, but not restricted or limited to, the policies contained in this document.

This Policy is immediately effective and applicable, and it supersedes any enforcement response or penalty guidance previously drafted or issued for the PRE Rule or LBP Activities Rule.

II. Overview of the Policy

This ERPP is divided into four main sections. The first section, "Introduction, Overview and Background" provides the statutory and regulatory setting for this policy. The second section, "Determining the Level of Enforcement Response," describes the Agency's options for

¹ 40 C.F.R. Part 745, Subparts E, L and Q (73 Fed. Reg. 21692; April 22, 2008) (amending the PRE Rule, LBP Activities Rule, and State/Tribal Programs Rule, respectively, at §§ 745.80-745.91, § 745.220, § 745.225, § 745.320, § 745.324, § 745.326, § 745.327, § 745.339). www.epa.gov/lead/pubs/renovation.htm#tenants, or www.gpoaccess.gov.

² 40 C.F.R. Part 745, Subpart E (§§ 745.80-745.88) (63 Fed. Reg. 29907; June 1, 1998).

³ 40 C.F.R. Part 745, Subpart L (§§ 745.220 – 745.239) (61 Fed. Reg. 45778; August 29, 1996, as amended 64 Fed. Reg. 42849; August. 6, 1999).

⁴ The § 1018 Disclosure Rule is addressed in a separate ERPP available in Appendix C at TSCA Enforcement Policy and Guidance Documents.

responding to violations of TSCA. The third section, “Assessing Civil Administrative Penalties,” elaborates on EPA’s policy and procedures for calculating civil penalties against persons who violate section 409 of TSCA by failing or refusing to comply with the regulatory requirements of the PRE, RRP and LBP Activities Rules. The fourth section, the appendices, contains, among other things, tables to be used in calculating civil penalties for this policy. The appendices to this ERPP are: Appendix A - Violations and Circumstance Levels; Appendix B - Gravity-Based Penalty Matrices; Appendix C - References for Policy Documents; Appendix D - List of Supplemental Environmental Projects (SEPs).

III. Background

In 1992, the United States Congress enacted Title X - Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 United States Code (U.S.C.) § 4851 (enacted as Title X of the Housing and Community Development Act of 1992). Section 1021 of Title X amended the Toxic Substances Control Act to add Title IV, entitled “Lead Exposure Reduction.”

Pursuant to Section 406(b) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, residential property renovations, requiring, among other things, persons who perform for compensation a renovation of pre-1978 housing (“target housing”) to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.

Pursuant to Section 402(a) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, Lead-Based Paint Activities, prescribing procedures and requirements for the accreditation of training programs and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, work practice standards for performing such activities, and delegation of programs.

Pursuant to Section 402(c)(3) of TSCA, EPA promulgated regulations amending at 40 C.F.R. Part 745, Subparts E and L, residential property renovations, prescribing procedures and requirements for the accreditation of training programs, certification of individuals and firms, work practice standards for renovation, repair and painting activities in target housing and child occupied facilities, and delegation of programs (Subpart Q) under Section 404.

Pursuant to Section 408 of TSCA, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government is subject to all federal, state, interstate, and local requirements, both substantive and procedural, regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.⁵

⁵ Therefore, federal agencies are subject to the PRE, RRP, and LBP Activities Rules ERPP and EPA has statutory penalty authority over federal agencies for violations of the LBP, LBP activities and LBP hazard requirements (15 U.S.C. § 2688). Regions generally must notify and consult with OECA’s Federal Facilities Enforcement Office prior to bringing an enforcement action against a federal agency. See, Appendix C, Memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*.

The failure or refusal to comply with any requirement of the PRE, RRP, or LBP Activities Rules is a prohibited act under Section 409 of TSCA (15 U.S.C. § 2689) and civil penalties can be assessed to address such violations pursuant to Section 16 of TSCA (15 U.S.C. § 2615) for each violation of Section 409. A civil penalty action is the preferred enforcement response for most violations.

Once the Agency finds that a violation of TSCA has occurred, it will need to determine the appropriate level of enforcement response for the violation.⁶ EPA can respond with a range of enforcement response options. These options include:

- Civil Administrative Complaints
- Notices of Noncompliance
- Civil Judicial Referrals
- Criminal Proceedings

I. Civil Administrative Complaints

A civil administrative complaint⁷ is the appropriate response to violations of the PRE, RRP, and LBP Activities Rules or failure to comply with a Notice of Noncompliance. Violators may be subject to civil administrative action including the assessment of civil penalties, with or without conditions, pursuant to 15 U.S.C. § 2615(a). Civil penalties are to be assessed by the Administrator by an order made on the record, after the violator is given a written notice and opportunity to request a hearing on the order, within 15 days of the date the notice is received by the violator.

A civil administrative complaint may include a proposed penalty that has been calculated pursuant to this policy. Alternatively, the complaint may specify the number of violations for which a penalty is sought, a brief explanation of the severity of each violation alleged, and a recitation of the statutory penalty authority applicable for each violation in the complaint.⁸ This latter approach would not eliminate the need for EPA to specify a proposed penalty during the course of the administrative litigation and explain in writing how the proposed penalty was calculated in accordance with 15 U.S.C. § 2615, but would postpone the requirement until after the filing of pre-hearing information exchanges, at which time each party shall have exchanged all factual information considered relevant to the assessment of a penalty.⁹

⁶ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Final List of Nationally Significant Issues and Process for Raising Issues to TPED*; November 1, 1994 or current revision. The NSI guidance was developed as implementation guidance to a memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*, Steven A. Herman, July 11, 1994.

⁷ A pre-filing notice or letter may be issued prior to the filing of a civil administrative complaint.

⁸ See, 40 C.F.R. § 22.14(a)(4).

⁹ See, 40 C.F.R. § 22.19(a)(4).

A civil administrative action can result in an enforceable agreement and the assessment of a penalty or a decision rendered by an Administrative Law Judge.¹⁰ Before an administrative penalty order becomes final, the Administrator must provide each Respondent, including federal agencies, with notice and an opportunity for a formal hearing, on the record,¹¹ in accordance with the Administrative Procedures Act. EPA's general rules of administrative practice are set forth in 40 C.F.R. Part 22, entitled "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

II. Notices of Noncompliance

On a case-by-case basis, EPA may determine that the issuance of a notice of noncompliance (NON),¹² rather than a civil administrative complaint is the most appropriate enforcement response to a violation.¹³ A NON should be issued to address violations in the following circumstances:

- i. Where a first time violator's violation has low probability of re-occurrence¹⁴ and low potential for harm; or
- ii. When a violator is in substantial compliance with the requirement as the specific facts and circumstances support.

A NON should, when necessary:

- i. Require corrective action by a specified date to return the violator to full compliance and resolve the violation(s);
- ii. Specify the type and nature of the corrective action necessary to return the violator to full compliance.


¹⁰ EPA may, at its discretion, issue a press release or advisory to notify the public of the filing of an enforcement action, settlement, or adjudication concerning a person's violation of TSCA. A press release can be a useful tool to notify the public of Agency actions for TSCA noncompliance and specifically, to educate the public on the requirements of LBP Program. The issuance of a press release or advisory as well as the nature of their contents are within the sole discretion of the Agency and shall not be subject to negotiation with the violator. See, *Restrictions on Communicating with Outside Parties Regarding Enforcement Actions*, March 8, 2006.

¹¹ See, 15 U.S.C. § 2615(a)(2)(A).

¹² A NON is not a formal enforcement action since there is no opportunity to respond to the notice on the record.

¹³ Supplementary guidance on this issuance of NONs in lieu of complaints may be provided for specific situations.

¹⁴ For example, if the same violation occurred on several occasions (e.g., a renovation firm failed to comply with the PRE Rule at 3 separate renovations including 3 units in a multi-unit renovation project), a NON should not be issued because the renovation firm demonstrated a pattern and practice of repeated violations.

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- iii. Require proof that the corrective action was taken by the specified date to demonstrate to the Agency's satisfaction that further action is not necessary to resolve the violation(s) and prevent recurrence; and
 - iv. Be placed in the violator's inspection, case development report record, or other file to document the Agency's response.

A NON should not:

- i. Be issued to a violator for a subsequent violation of a provision of the same rule (e.g., the RRP Rule) reoccurring within 5 years; or
- ii. Impose a monetary penalty.

III. Civil Judicial Referrals

EPA may ask the United States Department of Justice (DOJ) to seek injunctive relief in United States District Court under Section 17(a) of TSCA, 15 U.S.C. § 2616(a), to direct a violator to comply with the PRE, RRP, or LBP Activities Rules.

Civil Administrative Penalty and Injunction Relief: There may be instances in which the concurrent filing of a civil administrative complaint for penalty and a request for civil judicial injunctive relief under TSCA is appropriate.


IV. Criminal Proceedings

This ERPP does not address criminal violations of TSCA. However, if the civil case team has reason to believe that a violator knowingly violated any provision of TSCA, it should promptly refer the matter to the Criminal Investigation Division (CID). TSCA's criminal penalties are found in Section 16(b).¹⁵ In addition, pursuant to 18 U.S.C. Section 1001, it is a criminal violation to knowingly and willfully make a false or fraudulent statement in any matter within EPA's jurisdiction. In addition, it may be considered a criminal violation to knowingly or willfully falsify information provided to the Agency.

V. Parallel Criminal and Civil Proceedings

Although the majority of EPA's enforcement actions are brought as either a civil action or a criminal action, there are instances when it is appropriate to bring both a civil and a criminal action. These include situations where the violations merit the deterrent and retributive effects of

¹⁵ See, 15 U.S.C. § 2615(b).



criminal enforcement, yet a civil action is also necessary to obtain an appropriate remedial result, and where the magnitude or range of the environmental violations and the available sanctions make both criminal and civil enforcement appropriate.

Active consultation and cooperation between EPA's civil and criminal programs, in conformance with all legal requirements, including OECA's policy on parallel proceedings,¹⁶ are critical to the success of EPA's overall enforcement program. The success of any parallel proceedings depends upon coordinated decisions by the civil and criminal programs as to the timing and scope of their activities. For example, it will often be important for the criminal program to notify civil enforcement managers that an investigation is about to become overt or known to the subject. Similarly, the civil program should notify the criminal program when there are significant developments that might change the scope of the relief. In every parallel proceeding, communication and coordination should be initiated at both the staff and management levels and should continue until resolution of all parallel matters.

¹⁶ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Parallel Proceedings Policy*, Granta Y. Nakayama, September 24, 2007.

I. Computation of the Penalty

In determining the amount of any civil penalty for violations of the PRE, RRP, or LBP Activities Rules, "...the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require."¹⁷ On September 10, 1980, EPA published "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy"¹⁸ which describes in greater detail the "civil penalty system" under TSCA. The purpose of this system is to ensure that civil penalties are assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violation committed; that economic incentives for violating TSCA are eliminated and the penalty is a sufficient deterrent to future violations. The TSCA civil penalty system provides standard definitions and a calculation methodology for application of the statutory penalty factors that TSCA requires the Administrator to consider in assessing a civil penalty. The TSCA civil penalty system also states that as regulations are developed, specific penalty guidelines, such as this ERPP, will be developed adopting in detail the application of the general civil penalty system to the new regulation. In developing a proposed penalty, EPA will take into account the particular facts and circumstances of each case, with specific reference to the TSCA statutory penalty factors. This ERPP follows the general framework described in the 1980 "Guidelines" for applying the TSCA statutory penalty factors to violations in civil administrative enforcement cases.¹⁹

For each violation, the penalty amount is determined in a multi-step process:

1. Determine the number of independently assessable violations.
2. Determine the economic benefit.²⁰ One component of the total penalty is the estimated amount of economic benefit the respondent realized from non-compliance. This calculation is also subject to adjustment based on the violator's ability to pay/ability to continue in business. Considerations for calculating economic benefit are discussed in Item III "Economic Benefit of Noncompliance" and Item V "Ability to Pay/Continue in Business," of this Section.²¹

¹⁷ See, 15 U.S.C. 2615(a)(2)(B)

¹⁸ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59771, September 10, 1980. The Guidelines focus on what the proper civil penalty should be if a decision is made that a civil penalty is the proper enforcement remedy. The Guidelines do not discuss whether the assessment of a civil penalty is the correct enforcement response to a specific violation.

¹⁹ EPA will not apply civil administrative penalty policies in civil judicial context, but rather will apply statutory factors.

²⁰ Determining economic benefit is not specifically required by the Act, but is authorized under the "as justice may require" factor of 15 U.S. C. § 2615(a)(2)(B). See, 45 Fed. Reg. 59771, September 10, 1980.

²¹ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

3. Determine the gravity-based penalty. The other component of the total penalty is the gravity-based penalty. Under the TSCA Civil Penalty Guidelines, gravity-based penalties are determined in two stages:

- a. The first stage is the determination of a gravity-based penalty (GBP) (gravity refers to the overall seriousness of the violation). To determine the gravity-based penalty, the following factors are considered:
 - i. The nature of the violation;
 - ii. The circumstances of the violation; and
 - iii. The extent of harm that may result from a given violation.

These factors are incorporated into the penalty matrices in Appendix B that specify the appropriate gravity-based penalty²² and are discussed in more detail in Item IV of this section.

The penalty amounts in the gravity based penalty matrices in Appendix B have been increased pursuant to the Debt Collection Improvement Act of 1996, which requires federal agencies to periodically adjust the statutory maximum penalties to account for inflation. EPA has thus increased the maximum penalty amounts for TSCA violations to \$37,500.²³ Additional penalty inflation increases occur periodically and are incorporated by reference into this ERPP.

- b. The second stage involves adjusting the gravity-based penalty upward or downward. Adjustments to the penalty amount are made by considering several factors including the following:
 - i. The violator's ability to pay/ability to continue in business;
 - ii. The violator's history of prior violations;
 - iii. The violator's degree of culpability; and
 - iv. Such other matters as justice may require.

These adjustments are discussed in more detail in Item V of this Section.²⁴

²² See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

²³ See, *Civil Monetary Inflation Adjustment Rule*, 73 Fed. Reg. 75340, December 11, 2008.

²⁴ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

II. Independently Assessable Violations

A separate civil penalty, up to the statutory maximum, can be assessed for each independent violation of TSCA. A violation is considered independent if it results from an act (or failure to act) which is not the result of any other violation for which a civil penalty is being assessed or if at least one of the elements of proof is different from any other violation.

Each requirement of the PRE, RRP, and LBP Activities Rules is a separate and distinct requirement and a failure to comply with any requirement is a violation of the PRE, RRP, or LBP Activities Rules. To determine whether a violation of the PRE, RRP, or LBP Activities Rules has occurred, the applicable requirements must be reviewed to determine which regulatory provisions have been violated.

Examples of the training provider requirements:

- Employ a training manager who has the requisite experience, education, and/or training.
- Meet the minimum training curriculum requirements for each of the disciplines.


Examples of the pre-renovation education requirements:

- Deliver pamphlet to the owner and adult occupant before renovation begins (but not more than 60 days before work begins) **or** mail pamphlet to owner at least 7 days before renovation begins.
- Obtain from the owner and adult occupant, written acknowledgement that they received the pamphlet or obtain a certificate of mailing at least 7 days before the renovation begins.

Examples of a renovation/abatement project:

- Retain all records for 3 years following completion of a project to demonstrate compliance with the PRE, RRP, or LBP Activities Rules.
- Follow work practice standards in each unit of a multi-family housing building.

After identifying each applicable regulatory requirement, the next step is to determine the number of renovations that took place or the number of affected persons to which information was required to be distributed or training provided. The total number of violations depends in part on the number of renovations or on the number of affected entities to which information was required to be distributed. For example:

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1. A renovator contracts with a homeowner for renovation activities within the homeowner's one owner-occupied unit. Even if several renovation activities were conducted at that location, the activity is considered one renovation for purposes of determining whether violations of the PRE Rule occurred, since only one person needs to be notified – the homeowner.
 2. A renovator contracted with an owner of a multi-unit apartment building for 20 units to undergo renovation. This resulted in 20 separate requirements to comply with the PRE Rule for purposes of determining the number of violations because each unit had a separate adult occupant that the renovator needed to contact.
 3. In another example, if there are three unrelated children under the age of 6 at a child-occupied facility undergoing renovation and the renovator fails to notify the parents/guardians of all 3 children, the total number of violations for failure to provide the pamphlet is 3.

Similar calculations can be performed for applicable requirements for other parts of the PRE, RRP, and LBP Activities Rules to determine which regulatory provisions have been violated. A detailed list of some, but not all, potential violations of the PRE, RRP, and LBP Activities Rules is provided in Appendix A.

III. Economic Benefit of Noncompliance

An individual renovator, renovation or abatement contractor, training firm, or any other entity that has violated the PRE, RRP, or LBP Activities Rule(s) and Section 409 of TSCA should not profit from their actions.

The Agency's Policy on Civil Penalties (EPA General Enforcement Policy #GM-21), dated February 16, 1984, mandates the recapture of any significant economic benefit (EBN) that accrues to a violator from noncompliance with the law. Economic benefit can result from a violator delaying or avoiding compliance costs or when a violator otherwise realizes illegal profits through its noncompliance. A fundamental premise of the 1984 Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. Therefore, enforcement professionals should always evaluate the economic benefit of noncompliance in calculating penalties. Note that economic benefit can not exceed the statutory maximum penalty amount.

An economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in "significant" economic benefit to the violator. "Significant" is defined as an economic benefit that totals more than \$50 per room renovated per

renovation project²⁵ for all applicable violations alleged in the complaint. In the interest of simplifying and expediting an enforcement action, enforcement professionals may use the “rules of thumb” (discussed in Section 3. IV. b., below) to determine if the economic benefit will be significant.

EPA generally will not settle cases for an amount less than the economic benefit of noncompliance. However, the Agency’s 1984 Policy on Civil Penalties explicitly sets out three general areas where settling for less than the economic benefit may be appropriate. Since issuance of the 1984 Policy, the Agency has added a fourth exception for cases where ability to pay is a factor. The four exceptions are:

- The economic benefit component is an insignificant amount (defined for purposes of this policy as less than \$50 per room renovated per renovation project);
- There are compelling public concerns that would not be served by taking a case to trial;
- It is unlikely, based on the facts of the particular case as a whole, that EPA will be able to recover the economic benefit in litigation; and
- The company has documented an inability to pay the total proposed penalty.²⁶

a. Economic Benefit from Delayed Costs and Avoided Costs

Delayed costs are expenditures that have been deferred by the violator’s failure to comply with the requirements. The violator eventually will spend the money to achieve compliance. Delayed costs are either capital costs (i.e., equipment), if any, or one-time non-depreciable costs (e.g., certification fees for renovation firms, tuition fees for courses for certification).

Avoided costs are expenditures that will never be incurred, as in the case of a failure to implement renovation or abatement work practices. In this example, avoided costs include all the costs associated with procuring supplies and implementing engineering controls for dust or using banned practices for LBP removal. Those costs were never and will never be incurred.

b. Calculation of Economic Benefit from Delayed and Avoided Costs

Since 1984, it has been Agency policy to use either the BEN computer model or “rules of thumb” to calculate the economic benefit of noncompliance. The “rules of thumb” are straight-

²⁵ Alternatively, cost information can be derived from the *Economic Analysis for the TSCA Lead Renovation, Repair and Painting Program Final Rule for Target Housing and Child-Occupied Facilities*; Economic and Policy Analysis Branch, Exposure and Technology Division, Office of Pollution Prevention and Toxics. March, 2008.

²⁶ See, Section 3, Item V; Modification of Penalty, for a discussion of ability to pay/continue in business.

forward methods to calculate economic savings from delayed and avoided compliance expenditures. They are discussed more fully in the Agency's General Enforcement Policy #GM-22, entitled "A Framework for Statute-Specific Approaches to Penalty Assessments," issued on February 16, 1984, at pages 7-9. The "rule of thumb" methodology is available in a Lotus spreadsheet available to EPA enforcement professionals from the Special Litigation and Projects Division of the Office of Civil Enforcement. Enforcement professionals may use the "rules of thumb" whenever the economic benefit penalty is not substantial (generally under \$50 per room renovated per renovation project) and use of an expert financial witness may not be warranted. If the "rules of thumb" yield an amount over \$50 per room renovated per renovation project, the case developer should use the BEN model and/or an expert financial witness to calculate the higher economic benefit penalty. Using the "rules of thumb," the economic benefit of delayed compliance may be estimated at: 5% per year of the delayed one-time capital costs, if any, and/or one-time non-depreciable costs for the period from the date the violation began until compliance was or is expected to be achieved. For avoided annual costs, the "rule of thumb" is the annual expenses avoided until the date compliance is achieved less any tax savings. These rules of thumb do not apply to avoided one-time or avoided capital costs. Enforcement professionals should calculate the economic benefit of avoided one-time and avoided capital costs, if any, by using the BEN model.

The primary purpose of the BEN model is to calculate economic savings for settlement purposes. The model can perform a calculation of economic benefit from delayed or avoided costs based on data inputs, including optional data items and standard values already contained in the program. Enforcement professionals wishing to use the BEN model should take the Basic BEN training course offered by the Special Litigation and Projects Division in cooperation with NETI. Enforcement professionals who have questions while running the model can access the model's help system which contains information on how to: use BEN, understand the data needed, and understand the model's outputs.

The economic benefit component should be calculated for the entire period for which there is evidence of noncompliance, i.e., all time periods for which there is evidence to support the conclusions that the respondent was violating TSCA and thereby gained an economic benefit. Such evidence should be considered in the assessment of the penalty proposed for the violations alleged or proven, up to the statutory maximum for those violations. In certain cases, credible evidence may demonstrate that a respondent received an economic benefit for noncompliance for a period longer than the period of the violations for which a penalty is sought. In such cases, it may be appropriate to consider all of the economic benefit evidence in determining the appropriate penalty for the violations for which the respondent is liable. For example, the economic benefit component of a penalty for failure to comply with work practice standards at a large, multi-year renovation project during which EPA conducted compliance monitoring for only one year should be based on a consideration of the economic benefit gained for the entire period of the renovation, but the total penalty is limited to the statutory maximum for the specific violations alleged and proven.

In most cases, the violator will have the funds gained through non-compliance available for its continued use or competitive advantage until it pays the penalty. Therefore, for cases in which economic benefit is calculated by using BEN or by a financial expert, the economic benefit should be calculated through the anticipated date a consent agreement would be entered. If the matter goes to hearing, this calculation should be based on a penalty payment date corresponding with the relevant hearing date. It should be noted that the respondent will continue to accrue additional economic benefits after the hearing date, until the assessed penalty is paid. However, there are exceptions for determining the period of economic benefit when using a “rule of thumb.” In those instances, the economic benefit is calculated in the manner described in the first paragraph of this subsection.

IV. Gravity-Based Penalty

Lead poisoning in children, including poisoning in-utero, causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems. In severe cases it may lead to seizures, coma, and death. In as many as 38 million homes in the United States, children’s health is endangered by lead-based paint and/or lead-based paint hazards. Lead in housing and child-occupied facilities remains the most important source of lead exposure for young children and pregnant women. Providing information about the dangers from lead exposures and controlling exposures to lead is the focus of the PRE, RRP, and LBP Activates Rules. The nature and circumstance of a violation of these rules and the extent to which the violation poses a potential for harm are incorporated into the matrices that specify the appropriate gravity-based penalty for that specific or similar violations.

Nature

The TSCA Civil Penalty Guidelines define the nature of a violation as the essential character of the violation, and incorporates the concept of whether the violation is of a “chemical control,” “control-associated data gathering,” or “hazard assessment” nature. With respect to both the RRP and LBP Activities Rules, the requirements are best characterized as “chemical control” in nature because they are aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators and abatement contractors. In contrast, the requirements of the PRE Rule are best characterized as “hazard assessment” in nature. The PRE Rule requirements are designed to provide owners and occupants of target housing, owners and proprietors of child-occupied facilities, and parents and/or guardians of children under the age of 6 in child-occupied facilities, with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid the hazards. This information is vital to occupants of target housing and child-occupied facilities undergoing renovations or abatements to enable them to take proper precautions to avoid unnecessary exposure, especially to children under the age of 6 and pregnant women, that may be created during a renovation or abatement activity. The “nature” of the violation will have a

direct effect on the measure used to determine the appropriate “circumstance” and “extent” categories are selected on the GBP Matrix in Appendix B.

Circumstance

The term “circumstance” represents the probability of harm resulting from a particular type of violation. The PRE, RRP, and LBP Activities Rules constitute a comprehensive lead-based paint regulatory program. The PRE Rule requirements provide a warning of dangers from lead associated with pending renovations or abatements. The RRP Rule and LBP Activities Rule requirements provide for engineering controls to limit exposures to lead during renovation and abatements and the cleanup procedures to reduce exposures to lead following renovations and abatements. Post-cleanup sampling provides for verification of the effectiveness of the engineering controls and cleanup procedures by testing for residual exposures, if any, to lead.

Therefore, the greater the deviation from the regulations, the greater the likelihood that people will be uninformed about the hazards associated with lead-based paint and any renovations, that exposures will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the renovation/abatement work is completed.

Under the TSCA Penalty Guidelines, “Circumstances” are categorized as *High*, *Medium*, and *Low* and each category has two levels, for a total of six Circumstance levels. Consequently, the ERPP ranks potential violations using 6 levels that factor in compliance with the requirements of the PRE, RRP, or LBP Activities Rules. These requirements are associated with lack of knowledge of lead-based paint and lead-based paint hazards, increased exposure to lead or lead hazards, and verification of lead or lead hazard reduction after the actual renovation/abatement work is completed. For example:

1. For a PRE Rule violation, the harm is associated with the failure to provide information on LBP hazards prior to renovations (a “hazard assessment” activity by its nature under this policy). Therefore, the primary circumstance to be considered is the occupant’s ability to assess and weigh, via the PRE Rule notification process, the factors associated with the risk to their health from the planned renovation, so they can take proper precautions to avoid any lead hazards.
2. For a RRP Rule violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation (i.e., a “chemical control” activity by its nature under this policy). Therefore, the primary Circumstance to be considered is whether the specific violation has a high, medium, or low probability of impacting human health.

For purposes of this policy, specific violations of the PRE, RRP, and LBP Activities Rules have been categorized as follows:

Levels 1 and 2:	Violations having a high probability of impacting human health and the environment.
Levels 3 and 4:	Violations having a medium probability of impacting human health and the environment.
Levels 5 and 6:	Violations having a low probability of impacting human health and the environment.

Extent

The term “extent” represents the degree, range, or scope of a violation’s potential for harm. The TSCA Penalty Guidelines provide three “extent” categories: *Major*, *Significant*, and *Minor*. In the context of the PRE, RRP, and LBP Activities Rules, the measure of the “extent” of harm focuses on the overall intent of the rules and the amount of harm the rules are designed to prevent (e.g., serious health effects from childhood lead poisoning). For example, the potential for harm due to the failure of the renovator to provide the *Renovate Right* pamphlet could be considered “Major” if risk factors are high for exposure. In the example of an RRP violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation. Therefore, the primary consideration for determining the extent of harm to be considered is whether the specific violation could have a serious or significant or minor impact on human health, with the greatest concern being for the health of a child under 6 years of age and a pregnant woman in target housing. Even in the absence of harm in the form of direct exposures to lead hazards, the gravity component of the penalty should reflect the seriousness of the violation in terms of its effect on the regulatory program. For example, course completion certificates are used by inspectors to identify individuals at worksites who must perform key renovation activities under the RRP Rule. This allows inspectors to efficiently identify those individuals excluded from regulated renovation activities that require certified renovators and to document that each renovation firm employs and uses a certified renovator. TSCA Civil Penalty Guidelines provide the following definitions for the 3 Extent categories:

- Major: Potential for serious damage to human health or the environment.
- Significant: Potential for significant damage to human health or the environment.
- Minor: Potential for lesser amount of damage to human health or the environment.

Under these categories, the appropriate extent category for failure or refusal to comply with the provisions of the Rules is based upon 3 determinable facts:

- The age of any children who occupy target housing;

- Whether a pregnant woman occupies target housing; and
- Whether a child or children under six had access to the child-occupied facility during renovations/abatement.

Age of child(ren) occupying target housing: Age will be determined by the age of the youngest child residing in the target housing at the time the violation occurred or at the time the renovation occurred. However, any individual can be adversely affected by exposure to lead. Children under the age of 6 are most likely to be adversely affected by the presence of lead-based paint and/or lead-based paint hazards based on habits (particularly hand-to-mouth activity) and vulnerability due to their physical development.

If EPA knows or has reason to believe that a child under the age of 6 is present, then for purposes of proposing a gravity-based penalty, the Major extent category should be used. Where the age of the youngest individual is not known, or a respondent is able to demonstrate to EPA's satisfaction that the youngest individual residing in the target housing at the time of the violation was at least 6 years of age and less than eighteen, then a Significant extent factor should be used. Where a respondent is able to demonstrate to EPA's satisfaction that no individuals younger than eighteen were residing in the target housing at the time of the violation, then a Minor extent factor should be used.

Pregnant women living in target housing: Lead exposure before or during pregnancy can alter fetal development and cause miscarriages. If EPA determines that a pregnant woman occupied the target housing at the time a violation occurred, then a Major extent should be used.

Child-occupied facilities: Child-occupied facilities are, by definition, regularly visited by the same child(ren) under the age of 6. EPA will generally consider failures by renovation/abatement firms to notify parents or guardians of children under 6 as Major in extent. Where a respondent demonstrates to EPA's satisfaction that no children under 6 visited the facility during the renovation (*i.e.*, from the beginning of the renovation through the final cleaning verification), such as during an elementary school's summer break, then an extent factor other than Major should be used.

V. Modification of the Penalty

In addition to the factors discussed in Subsection IV Gravity-Based Penalty above, EPA shall also consider regarding the violations which are the subject of the specific action, with respect to the violator:

- The degree of culpability;
- Any history of prior such violations;

- The ability to pay/ability to continue to do business; and
- Such other matters as justice may require.²⁷

All appropriate upward adjustments of the gravity-based penalty amount should be made prior to the issuance of the proposed penalty, while downward adjustments²⁸ generally should not be made until after the proposed penalty has been issued, at which time these factors may be considered either during settlement negotiations or litigation.

Degree of Culpability

This factor may be used to increase or decrease the gravity-based penalty. TSCA is a strict liability statute for civil actions, so that culpability is irrelevant to the determination of legal liability. However, this does not render the violator's culpability irrelevant in assessing an appropriate penalty. Knowing or willful violations generally reflect an increased culpability on the part of the violator and may even give rise to criminal liability. The culpability of the violator should be reflected in the amount of the penalty, which may be adjusted upward or downward by up to 25% for this factor. In assessing the degree of culpability, all of the following points should be considered:

- Amount of control the violator had over the events constituting the violation;
- Level of sophistication (knowledge of the regulations) of the violator in dealing with compliance issues; and
- Extent to which the violator knew, or should have known, of the legal requirement that was violated. (For example, was the violator previously informed of the federal requirement to provide the “*Renovate Right*” pamphlet in a prior notice of a local code violation from a local building permit or code office?)

History of Prior Violations

A prior history of violations of the PRE, RRP, or LBP Activities Rules should be reflected in the amount of the penalty. The gravity-based penalty matrices are designed to apply to “first offenders.” Where a violator has demonstrated a similar history of “such violations” the Act requires the penalty to be adjusted upward by as much as 25% under the *Guidelines for Assessment of Civil Penalties under Section 16 of TSCA*. The need for such an upward adjustment is usually justified because the violator has not been sufficiently motivated to comply

²⁷ See, 15 U.S.C. § 2615(a)(2)(B). Under unusual circumstances there may be other factors not specified herein that must be considered to reach a just resolution.

²⁸ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

with the PRE, RRP, or LBP Activities Rules by the penalty assessed for the previous violation(s).

For the purpose of this policy, EPA interprets “prior such violations” to mean any prior violation(s) of the PRE, RRP, or LBP Activities Rules. For example, the following guidelines apply in evaluating the history of such violations to the PRE Rule:

To constitute a prior violation:

1. The prior violation must have resulted in a consent agreement and final order or consent order (CAFO), consent decree, default judgment (judicial decision), or criminal conviction; and
 2. The resulting order/judgment/conviction was entered or executed within five calendar years prior to the date the subsequent violation occurred. Receipt of payment made to the U.S. Treasury can be used as evidence constituting a prior violation, regardless of whether a respondent admits to the violation and/or enters into a CAFO. Issuance of a NON does not constitute a prior violation for purposes of this policy since no violation is formally found and no opportunity to contest the notice is provided. In order to constitute a prior violation, a prior violation must have resulted in a final order. Violations litigated in Federal courts under the Act’s imminent hazard (§ 7), specific enforcement and seizure (§ 17), and criminal (§ 16(b)) provisions, are also part of a violators history for penalty assessment purposes.
- Two or more corporations or business entities owned by, or affiliated with, the same parent corporation or business entity may not necessarily affect each other’s history (such as with independently-owned franchises) if they are substantially independent of one another in their management and in the functioning of their Boards of Directors. EPA reserves the right to request, obtain, and review all underlying and supporting financial documents that elucidate relationships between entities to verify their accuracy. If the violator fails to provide the necessary information, and the information is not readily available through other sources, then EPA is entitled to rely on the information it does have in its control or possession.
 - In the case of wholly-owned subsidiaries, the parent corporation’s history of violation will apply to all of its subsidiaries. Similarly, the history of violation for a wholly-owned subsidiary will apply to the parent corporation.

Ability to Pay/Continue in Business

Section 16(a)(2)(B) of TSCA requires that the violator's ability to pay the proposed civil penalty be considered as a statutory factor in determining the amount of the penalty. Absent proof to the contrary, EPA can establish a respondent's ability to pay with circumstantial evidence relating to a company's size and annual revenue. Once this is done, the burden is on the respondent to demonstrate an inability to pay all or a portion of the calculated civil penalty.²⁹

To determine the appropriateness of the proposed penalty in relation to a person's ability to pay, the case team should review publicly-available information, such as Dun and Bradstreet reports, a company's filings with the Securities and Exchange Commission (when appropriate), or other available financial reports before issuing the complaint. In determining the amount of a penalty for a violator when financial information is not publicly-available, relevant facts obtained concerning the number of renovation contracts signed by a violator and the total revenues generated from such renovation contracts may offer insight regarding the violator's ability to pay the penalty.

The Agency will notify the respondent of its right under the statute to have EPA consider its ability to continue in business in determining the amount of the penalty. Any respondent may raise the issue of ability to pay/ability to continue in business in its answer to the complaint or during the course of settlement negotiations. If a respondent raises "inability to pay" as a defense in its answer or in the course of settlement negotiations, the Agency should ask the respondent to present appropriate documentation, such as tax returns and financial statements. The respondent should provide records that conform to generally accepted accounting principles and procedures at its expense. EPA generally should request the following types of information:

- The last three to five years of tax returns;
- Balance sheets;
- Income statements;
- Statements of changes in financial position;

²⁹ Note that under the Environmental Appeals Board ruling in *In re: New Waterbury, LTD*, 5 E.A.D. 529 (EAB 1994), in administrative enforcement actions for violations under statutes that specify ability to pay (which is analogous to ability to continue in business) as a factor to be considered in determining the penalty amount, EPA must prove it adequately considered the appropriateness of the penalty in light of all of the statutory factors. Accordingly, enforcement professionals should be prepared to demonstrate that they considered the respondent's ability to continue in business as well as the other statutory penalty factors and that their recommended penalty is supported by their analysis of those factors. EPA may obtain information regarding a respondent's ability to continue in business from the respondent, independent commercial financial reports, or other credible sources.

- Statement of operations;
- Information on business and corporate structure;
- Retained earnings statements;
- Loan applications, financing agreements, security agreements;
- Annual and quarterly reports to shareholders and the SEC, including 10K reports; and
- Statements of assets and liabilities.

There are several sources available to assist enforcement professionals in determining a respondent's ability to pay. Enforcement professionals considering a respondent's ability to continue in business should consult "A Framework for Statute-Specific Approaches to Penalty Assessments" (cited above) and EPA General Enforcement Policy PT.2-1 (previously codified as GM-#56), entitled "Guidance on Determining a Violator's Ability to Pay a Civil Penalty" (December 16, 1986). In addition, the Agency has three computer models available to help assess whether violators can afford compliance costs and/or civil penalties: ABEL, INDIPAY and MUNIPAY. INDIPAY analyzes individual taxpayers' claims about inability to pay. MUNIPAY analyzes ability to pay for cities, towns, and villages. These models are designed for settlement purposes only.

ABEL is an EPA computer model that is designed to assess inability to pay claims from corporations and partnerships. The evaluation is based on the firm's excess cash flow. ABEL looks at the money coming into the entity and the money going out. It then looks at whether the excess cash flow is sufficient to cover the firm's environmental responsibilities (i.e., compliance costs) and the proposed civil penalty. Because the program only focuses on a violator's cash flow, there are other sources of revenue that should also be considered to determine if a firm or individual is unable to pay the full penalty. These include:

- Certificates of deposit, money market funds, or other liquid assets;
- Reduction in business expenses such as advertising, entertainment, or compensation of corporate officers;
- Sale or mortgage of non-liquid assets such as company cars, aircraft, or land; and
- Related entities (e.g., the violator is a wholly owned subsidiary of Fortune 500 company).

A respondent may argue that it cannot afford to pay the proposed penalty even though the penalty as adjusted does not exceed EPA's assessment of its ability to pay. In such cases, EPA may consider a delayed payment schedule calculated in accordance with Agency installment payment guidance and regulations.³⁰ In exceptional circumstances, EPA may also consider further adjustment below the calculated ability to pay.

Finally, EPA will generally not collect a civil penalty that exceeds a violator's ability to pay as evidenced by a detailed tax, accounting, and financial analysis.³¹ However, it is important that the regulated community not choose noncompliance as a way of aiding financially troubled businesses. Therefore, EPA reserves the option, in appropriate circumstances, of seeking a penalty that might exceed the respondent's ability to pay, cause bankruptcy, or result in a respondent's inability to continue in business. Such circumstances may exist where the violations are egregious³² or the violator refuses to pay the penalty. However, if the case is generated out of an EPA regional office, the case file must contain a written explanation, signed by the regional authority duly delegated to issue and settle administrative penalty orders under TSCA, which explains the reasons for exceeding the "ability to pay" guidelines. To ensure full and consistent consideration of penalties that may cause bankruptcy or closure of a business, the regions should consult with the Waste and Chemical Enforcement Division (WCED).³³

Size of Violator: EPA estimated³⁴ that about 394,000 firms supply renovation services nationwide including 82,800 small residential remodeling firms that employ less than 4 people. An additional 1.2 million people are self-employed contractors covered under the RRP Rule, including 194,000 residential remodelers. The general presumption is that small, independent renovation firms lack the level of knowledge and awareness of the LBP rules shared by larger renovators with more employees and more extensive involvement in the renovation industry. Therefore, this factor should be considered when considering economic benefit from noncompliance, ability to pay/continue in business³⁵ for very small firms and the self-employed.

³⁰ See, 40 C.F.R. § 13.18.

³¹ See, TSCA Penalty Guidelines, 45 Fed. Reg. 59775, September 1, 1980. Each financial analysis of a respondent's ability to pay should assume an ability to pay at least a small penalty to acknowledge and reinforce the respondent's obligations to comply with the regulatory requirements cited as violations in the civil administrative complaint.

³² An example of an egregious situation would be where a firm or individual renovator failed to follow any work practice standard, including containment, cleanup, or post-cleanup verification, or used prohibited or restricted practices which resulted in a paint, dust, or soil lead hazard in target housing where a pregnant woman or child under 6 resided or in a child occupied facility.

³³ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

³⁴ See, Footnote 25, pages 2-16 through 2-20.

³⁵ See, Footnote 31, concerning reinforcing a respondent's obligation to comply.

Other Factors as Justice May Require

This provision allows an adjustment to the gravity-based component of a penalty for other factors which may arise on a case-by-case basis. The factors discussed in this section may or may not be known at the time a pre-filing letter is sent or a complaint is issued. To the extent that these and other relevant factors become known, adjustments to gravity-based penalties calculated using the factors in Section 3. IV. above, may be made prior to issuing a complaint or at any time thereafter.

Voluntary Disclosure of Violations prior to an Inspection, Investigation, or Tip/Complaint

Violations must be disclosed to EPA before the Agency receives any information about the violations or initiates an inspection or investigation of the firm or individual. No penalty reductions should be given under the Audit Policy, Small Business Policy, or for other voluntary disclosures where the penalties are based on inspections or other investigations.

Audit Policy: A renovator who conducts an audit and voluntarily self-discloses any violations of the PRE, RRP, or LBP Activities Rules under the “Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations” (65 FR 19618, April 11, 2000 (Audit Policy)), may be eligible for a reduction of the gravity-based penalty if all the criteria established in the audit policy are met.³⁶ Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

Small Business Policy: A business with fewer than 100 employees may be eligible for a reduction of a gravity-based penalty under the EPA’s Policy on Compliance Incentives for Small Business (Small Business Policy, June 10, 1996).³⁷ Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

Voluntary Disclosures: If a firm or individual self-discloses a violation of the PRE, RRP, or LBP Activities Rules but does not qualify for consideration under either the Audit Policy or the Small Business Policy, the proposed civil penalty amount may still be reduced for such voluntary disclosure. To encourage voluntary disclosures of violations, EPA may make a reduction of up to 10% of the gravity-based penalty. An additional reduction up to 10% (for a total reduction of up to 20%) may be given to those violators who report the potential violation to EPA within 30 days of self-discovery of the violation(s).

³⁶ See, Appendix C, Audit Policy

³⁷ See, Appendix C, Small Business Policy.

Attitude

In cases where a settlement is negotiated prior to a hearing, after other factors have been applied as appropriate, EPA may reduce the resulting adjusted proposed gravity-based penalty up to a total of 30%, but not more than the calculated economic benefit from non-compliance for attitude,³⁸ if the circumstances warrant. In addition to creating an incentive for cooperative behavior during the compliance evaluation and enforcement process, this adjustment factor further reinforces the concept that respondents face a significant risk of higher penalties in litigation than in settlement. The attitude adjustment has 3 components: cooperation, immediate steps taken to comply with the LBP rules, and early settlement:

- EPA may reduce the adjusted proposed penalty up to 10% based on a respondent's cooperation throughout the entire compliance monitoring, case development, and settlement process.
- EPA may reduce the adjusted proposed penalty up to 10% for a respondent's immediate good faith efforts to comply with the violated regulation and the speed and completeness with which it comes into compliance.
- EPA may reduce the adjusted proposed penalty up to 10% if the case is settled before the filing of pre-hearing exchange documents.

Special Circumstances/Extraordinary Adjustments

A case may present other factors that the case team believes justify a further reduction of the penalty.³⁹ For example, a case may have particular litigation strengths or weaknesses that have not been adequately captured in other areas of this ERPP. If the facts of the case or the nature of the violation(s) at issue reduce the strength of the Agency's case, then an additional penalty reduction may be appropriate. In such circumstances, the case team should contact OECA to discuss.⁴⁰ If after careful consideration, the case team determines that an additional reduction of the penalty is warranted, it should ensure the case file includes substantive reasons why the extraordinary reduction of the civil penalty is appropriate, including: (1) why the penalty derived from the TSCA civil penalty matrices and gravity adjustment is inequitable; (2) how all other methods for adjusting or revising the proposed penalty would not adequately resolve the inequity; (3) the manner in which the adjustment of the penalty effectuated the purposes of the Act; and (4) documentation of management concurrence in the extraordinary reduction. EPA should still obtain a penalty sufficient to remove any economic incentive for violating applicable TSCA requirements.

³⁸ See, TSCA Civil Penalty Guidance, attitude of the violator. 45 Fed. Reg. 59773; September 10, 1980

³⁹ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Documenting Penalty Calculations and Justifications of EPA Enforcement Actions*, James Strock, August 9, 1990.

⁴⁰ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

VI. Adjusting Proposed Penalties in Settlement

Certain circumstances may justify adjustment of the proposed penalty. These circumstances may come to EPA's attention when a respondent files an answer to a civil complaint or during pre-filing settlement discussions under the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties*, 40 C.F.R. Part 22.

1) Factual Changes

EPA will recalculate the proposed penalty if the respondent can demonstrate that facts material to the initial calculation are different. For example:

- The owner of a property undergoing renovation/abatement provides appropriate documentation⁴¹ that the portion of the property undergoing renovation/abatement is lead-based paint free;
- A renovator or renovation firm provides appropriate documentation that it was renovating/abating a portion of property previously demonstrated to them to be LBP free; or
- A renovator or renovation firm provides appropriate documentation that it had renovated/abated a portion of property subsequently demonstrated to them to be LBP free.

In every case, the burden is on the respondent to raise those new factors which may justify the recalculation, consistent with the new facts.

2) Remittance of Penalty

The statute authorizes the Administrator to compromise, modify or remit, with or without condition, any civil penalty which may be imposed under this section.⁴² EPA has issued a policy on implementing this subsection.⁴³ An example of the application of this policy would be the remittance of a portion of the unadjusted gravity-based penalty developed for violations of the RRP Rule in consideration of acceptance of a suspension or revocation of the violator's LBP certification or training authorization. The violator would still be liable for a penalty for any economic benefit accrued as a result of the violation(s). The terms of the remittance and suspension or revocation must be incorporated into a Compliance Agreement and Final Order.⁴⁴

⁴¹ "Appropriate documentation" or "demonstration" such as reports of lead inspections conducted in accordance with HUD's Guidelines for Assessment of Lead-Based Paint and Lead-Based Paint Hazards.

⁴² See, 15 U.S.C. 2615(a)(2)(C), Section 16(a)(2)(C) of TSCA.

⁴³ See, Appendix C, TSCA Enforcement Policy and Guidance Documents; Memorandum, *Settlement with Conditions*, A. E. Conroy II, November 16, 1983.

⁴⁴ This provision may also be used to remit penalties in exchange for the completion of projects similar to those projects implemented under the Supplemental Environmental Projects program.

The Chief of the Chemical Risk and Reporting Branch must concur before an offer to remit is made under this ERPP.⁴⁵

3) Supplemental Environmental Projects

Supplemental Environmental Projects (SEPs) are environmentally beneficial projects that a respondent agrees to undertake in settlement of an environmental enforcement action, but that the respondent is not otherwise legally required to perform. In return, the cost of the SEP reduces the amount of the final penalty paid by the respondent. SEPs are only available in negotiated settlements.

EPA has broad discretion to settle cases with appropriate penalties. Evidence of a violator's commitment and ability to perform the proposed SEP is a relevant factor for EPA to consider in establishing an appropriate settlement penalty. The SEP Policy,⁴⁶ defines categories of projects that may qualify as SEPs, procedures for calculating the cost of the SEP, and the percentage of that cost which may be applied as a mitigating factor in establishing an appropriate settlement amount. EPA should ensure that the inclusion of any SEP in settlement of an enforcement action is consistent with the SEP Policy in effect at the time of the settlement. Examples of potential SEPs are listed in Appendix D.

⁴⁵ See, Footnote 6. Please consult the current document for any additional or more recent guidance or requirement for consultation or concurrence.

⁴⁶ See, Appendix C for links to SEP Policies.

APPENDICES

Appendix A Violations and Circumstance Levels

CIRCUMSTANCE LEVEL

⁴⁸ Circumstance Level	Rule Violation
Section I Information Distribution Requirements	
Level 1b	<u>1-Renovation in Dwelling Unit:</u> Failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(1)
Level 1b	<u>2-Renovation in Dwelling Unit:</u> Failure to provide the adult occupant of the unit (if not the owner) with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(2)
Level 1b	<u>3-Renovation in Common Area:</u> Failure to provide the owner of the multi-family housing with the EPA-approved lead hazard information/pamphlet or to post informational signs pursuant to 40 C.F.R. § 745.84(b)(1)
Level 1b	<u>4-Renovation in Common Area:</u> Failure to notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of the renovation, or to post informational signs pursuant to 40 C.F.R. §745.84(b)(2)
Level 1b	<u>5-Renovation in Child-Occupied Facility:</u> Failure to provide the owner of the building in which the child-occupied facility is located with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. §745.84(c)(1)(i)
Level 1b	<u>6-Renovation in Child-Occupied Facility:</u> Failure to provide an adult representative of the child-occupied facility with the pamphlet, if the owner is not the operator of the child-occupied facility, pursuant to 40 C.F.R. §745.84(c)(1)(ii)
Level 1b	<u>7-Renovation in Child-Occupied Facility:</u> Failure to provide the parents and/or guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date, by mailing or hand-delivering the pamphlet and renovation information, or by posting informational signs describing the general nature and locations of the renovation and the anticipated completion date, posted in areas where they can be seen by parents or guardians of the children frequenting the child-occupied facility, and accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians, pursuant to 40 C.F.R. §745.84(c)(2)
Level 1b	<u>8-All Renovations:</u> Failure of firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed, pursuant to 40 C.F.R. §745.85 (1).
Section II Test Kits	
Level 1a	<u>1-All Renovations:</u> Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit result provided a false negative result for lead (i.e., no lead)
Level 5a	<u>2-All Renovations:</u> Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit provided an accurate result for the presence of lead

⁴⁸ The matrices in Appendix A on pages B-1 through B-9 contain 2 tiers. Circumstance Level “b” is for PRE Rule requirements which are “hazard assessment” in Nature. Circumstance Level “a” is for LBP Activities Rule and RRP Rule requirements which are “chemical control” in Nature, and all combinations of “a” and “b” violations.

Revised -April, 2013

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Section III Failure to Allow Access to Records, or Refusal of An Inspection	
Level 2a	<u>1-All Renovations:</u> Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.87(c), which states that such failure or refusal to permit entry or inspection is also a violation of TSCA §15 and TSCA §409
Level 2a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.235(c), as required by §745.237 and section 11 of TSCA (15 U.S.C. § 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. § 2614, 2689)
Section IV Failure to Establish and Maintain Records, Failure or Refusal to Make Records Available	
Level 3a	<u>1-All Renovations:</u> Failure or refusal to establish and maintain records, or to make available such records, pursuant to 40 C.F.R. §745.87(b), which states that such failure or refusal is a violation of TSCA§409
Level 3a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure or refusal to establish maintain, provide, copy, or permit access to records or reports, pursuant to 40 C.F.R. §745.225, § 745.226, and/or §745.227
Section V Acknowledgment and Certification Statement Requirements	
Level 4b	<u>1-Renovation in Dwelling Unit:</u> 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	<u>2-Renovation in Dwelling Unit:</u> 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)
Level 4b	<u>3-Renovation in Common Area:</u> 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	<u>4-Renovation in Common Area:</u> 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 5b	<u>5-Renovation in Common Area:</u> 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 4b	<u>6-Renovation in Child-Occupied Facility:</u> 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	<u>7-Renovation in Child-Occupied Facility:</u> 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	<u>8-Renovation in Child-Occupied Facility:</u> 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)
Level 5b	<u>9-All Renovations:</u> 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	<u>10-All Renovations:</u> 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)

Revised -April, 2013

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Section VI Record Retention Requirements	
Level 6a	<u>1-All Renovations:</u> 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
Level 6a	<u>2-All Renovations:</u> Failure of a training program to maintain and make available to EPA upon request, records for a period of 3 years and 6 months, pursuant to 40 C.F.R. § 745.225 (i)
Level 6a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §§745.225, 745.226, or 745.227, pursuant to 40 C.F.R. § 745.235 (b)
Section VII Renovation Firm, Renovator and Dust Sampling Technician Certifications and Requirements	
Level 3a ⁴⁹	<u>1-All Renovations:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.89(a) pursuant to 40 CFR § 745.81(a)(2)(ii)
Level 5a	<u>2-All Renovations:</u> 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)
Level 5a	<u>3-All Renovations:</u> 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). Failure of a firm to halt renovations or dust sampling until its certification is amended, pursuant to 40 C.F.R. §745.89(c)
Level 3a	<u>4-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(1) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>5-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(2) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>6-All Renovations:</u> 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 obtain a course completion certificate (proof of certification) under 40 CFR § 745.90(a)), pursuant to 40 C.F.R. §745.81(a)(3)
Level 4a	<u>7-All Renovations:</u> 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)
Level 1a	<u>8-All Renovations:</u> Failure of an individual to perform responsibilities for ensuring compliance with 40 C.F.R. §745.85 at all renovations to which they are assigned, pursuant to 40 C.F.R. § 745.90(b) or (c)
Level 1a	<u>9-All Renovations:</u> Failure of a dust sampling technician to perform optional dust clearance sampling under §745.85(c), pursuant to 40 C.F.R. § 745.90(c)
Level 5a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop directing renovations if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(3)
Level 5a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop renovations or dust sampling if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(4)
Section VIII Training Providers: Accreditation and Operation of Training Programs	
Level 3a	<u>1-Target Housing and Child-occupied Facilities:</u> 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)

⁴⁹ For a self-employed renovator or very small firm (<4 employees), the “Extent” category is usually “minor” for “offering to perform” renovations. For larger firms, such as those acting as general contractors, the “Extent” category is usually “major” because the potential impact is greater in the number and size of renovations.

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>2-Target Housing and Child-occupied Facilities:</u> 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	<u>3-Target Housing and Child-occupied Facilities:</u> Failure by a training program to designate a qualified principal instructor for each course who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225(c)(2)
Level 3a	<u>4-Target Housing and Child-occupied Facilities:</u> 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 6a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure of a training program to submit or retain 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 5a	<u>6-Target Housing and Child-occupied Facilities:</u> 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 3a	<u>7-Target Housing and Child-occupied Facilities:</u> 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 4a	<u>8-Target Housing and Child-occupied Facilities:</u> 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)
Level 6a	<u>9-Target Housing and Child-occupied Facilities:</u> 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 5a	<u>10-Target Housing and Child-occupied Facilities:</u> 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 3a	<u>Target Housing and Child-occupied Facilities:</u> Failure of a training program to ensure that courses offered by the training program teach the work practice standards contained in §745.85 or §745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting, pursuant to 40 C.F.R. §745.225(c)(10)
Level 3a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of 40 C.F.R. §745.225, pursuant to 40 C.F.R. §745.225(c)(12)
Level 6a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to provide notification of renovator, dust sampling technician, or renovator, dust sampling technician, or lead-based paint activities offered, pursuant to 40 C.F.R. §745.22(c)(13)
Level 6a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure by training manager to provide EPA with notification of all lead-based paint activities courses offered at least 7 business days prior to the start date of any lead-based paint activities course, pursuant to 40 C.F.R. §745.225(c)((13)(i)
Level 5a	<u>14-Target Housing and Child-occupied Facilities:</u> 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)
Level 3a	<u>15-Target Housing and Child-occupied Facilities:</u> 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)

Revised -April, 2013

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Section IX Work Practice Standards for Conducting Renovations in Target Housing and Child-Occupied Facilities	
Level 2a	<u>1-Interior Renovations:</u> Failure by the renovation firm to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed, pursuant to 40 C.F.R. §745.85(a)(2)(i)(A)
Level 2a	<u>2-Interior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material, pursuant to 40 C.F.R. §745.85(a)(2)(i)(B)
Level 2a	<u>3-Interior Renovations:</u> Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, pursuant to 40 C.F.R. §745.85(a)(2)(i)(C)
Level 2a	<u>4-Interior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, pursuant to 40 C.F.R. §745.85(a)(2)(i)(D)
Level 2a	<u>5-Interior Renovations:</u> Failure by the renovation firm to use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area, pursuant to 40 C.F.R. §745.85(a)(2)(i)(E)
Level 2a	<u>6-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to close all doors and windows within 20 feet of the renovation, close all doors and windows within 20 feet of the renovation on the same floor as the renovation on multi-story buildings, and/or close all doors and windows on all floors below that are the same horizontal distance from the renovation, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(A)
Level 2a	<u>7-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(B)
Level 2a	<u>8-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(C)
Level 2a	<u>9-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovations in certain situations, to take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(D)
Level 1a	<u>10-Prohibited and restricted practices:</u> Failure to prohibit the use of open-flame burning or torching of lead-based paint during renovations, pursuant to 40 C.F.R. §745.85(a)(3)(i)
Level 1a	<u>11-Prohibited and restricted practices:</u> Failure to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control, pursuant to 40 C.F.R. §745.85(a)(3)(ii)
Level 1a	<u>12-Prohibited and restricted practices:</u> Failure to restrict the operating of a heat gun on lead-based paint to temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.85(a)(3)(iii)
Level 2a	<u>Waste from renovations:</u> Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal and/or failure to cover a chute if it is used to remove waste from the work area, pursuant to 40 C.F.R. §745.85(a)(4)(i)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 2a	<u>13-Waste from renovations</u> : Failure at the conclusion of each work day and/or at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, pursuant to 40 C.F.R. §745.85(a)(4)(ii)
Level 2a	<u>14-Waste from renovations</u> : Failure by the renovation firm to contain the waste to prevent release of dust and debris during the transport of waste from renovation activities, pursuant to 40 C.F.R. §745.85(a)(4)(iii)
Level 1a	<u>15-Cleaning the work area</u> : Failure by the renovation firm to clean the work area until no dust, debris or residue remains after the renovation has been completed, pursuant to 40 C.F.R. §745.85(a)(5)
Level 1a	<u>16-Cleaning the work area</u> : Failure by the renovation firm to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, pursuant to 40 C.F.R. §745.85(a)(5)(i)(A)
Level 1a	<u>17-Cleaning the work area</u> : Failure by the renovation firm to remove the protective sheeting by misting the sheeting before folding it, folding the dirty side inward, and/or either taping shut to seal or sealing it in heavy-duty bags, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>18-Cleaning the work area</u> : Failure by the renovation firm to keep in place the plastic sheeting used to isolate contaminated rooms from non-contaminated rooms until after the cleaning and removal of other sheeting, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>19-Cleaning the work area</u> : Failure by the renovation firm to dispose of the plastic sheeting, used as occupant protection at the renovation site, as waste, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B).
Level 1a	<u>20-Cleaning the work area</u> : Failure by the renovation firm to clean all objects and surfaces in the work area and within 2 feet of the work area, cleaning from higher to lower, pursuant to 40 C.F.R. §745.85(a)(5)(ii)
Level 1a	<u>21-Cleaning the work area</u> : Failure by the renovation firm to clean walls in the work area, starting at the ceiling and working down to the floor, by either vacuuming with a HEPA vacuum or wiping with a damp cloth, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(A)
Level 1a	<u>22-Cleaning the work area</u> : Failure by the renovation firm to thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum and/or failure to use a HEPA vacuum equipped with a beater bar when vacuuming carpets and rugs, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(B).
Level 1a	<u>23-Cleaning the work area</u> : Failure by the renovation firm to wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth and/or failure to mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(C)
Level 1a	<u>24-Standards for post-renovation cleaning verification</u> : Failure by a renovator to perform a visual inspection of the interior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(1)(i)
Level 1a	<u>25-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior windowsill in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures, pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (A) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(A)
Level 1a	<u>26-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior floor in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (B) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(B)
Level 1a	<u>27-Standards for post-renovation cleaning verification</u> : Failure by a renovator to wait until interior work area passes post-renovation cleaning verification before removing signs, pursuant to 40 C.F.R. §745.85(b)(1)(iii)

Revised -April, 2013

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 1a	<u>28-Standards for post-renovation cleaning verification:</u> Failure by a renovator to perform a visual inspection of the exterior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>29-Standards for post-renovation cleaning verification:</u> Failure by a renovator to wait until exterior work area passes visual inspection before removing signs, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>30-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to arrange for the performance of optional dust clearance testing at the conclusion of the renovation if required to do so by the person contracting for the renovation, a Federal, State, Territorial, Tribal, or local law or regulation, pursuant to 40 C.F.R. §745.85(c)
Level 1a	<u>31-Standards for post-renovation cleaning verification:</u> Failure to have the optional dust clearance testing performed by a certified inspector, risk assessor or dust sampling technician at the conclusion of the renovation, pursuant to 40 C.F.R. §745.85(c)(2)
Level 1a	<u>32-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to re-clean the work area until dust clearance results are below clearance standards, pursuant to 40 C.F.R. §745.85(c)(3)
Section X Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities	
Level 1a	<u>1-Target Housing and Child-occupied Facilities:</u> Failure to perform all lead-based paint activities pursuant to the work practice standards, appropriate requirements, methodologies and clearance levels specified and referenced, pursuant to 40 C.F.R. §745.227(a)(1)
Level 2a	<u>2- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, is performed by a certified individual in compliance with the appropriate requirements, pursuant to 40 C.F.R. §745.227(a)(2)
Level 2a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an inspection is conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(b)(1)
Level 1a	<u>4-Target Housing and Child-occupied Facilities:</u> Failure in an inspection to select locations according to documented methodologies to be tested for the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(b)(2)
Level 3a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a residential dwelling and/or child-occupied facility, pursuant to 40 C.F.R. §745.227(b)(2)(i)
Level 3a	<u>6-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a multi-family dwelling, pursuant to 40 C.F.R. §745.227(b)(2)(ii)
Level 5a	<u>7-Target Housing and Child-occupied Facilities:</u> Failure to ensure that paint sampled for analysis to determine the presence of lead was conducted using documented methodologies which incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(b)(3)(i)
Level 3a	<u>8- Target Housing and Child-occupied Facilities:</u> Failure to ensure that all collected paint chip samples were analyzed according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(b)(3)(ii)
Level 3a	<u>9- Target Housing and Child-occupied Facilities:</u> 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)
Level 2a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(c)(1)
Level 3a	<u>11- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(c)(2)(i)

Revised -April, 2013

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to determine the presence of deteriorated paint, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(A)
Level 3a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to locate at least two dust samples performed according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(B)
Level 3a	<u>14- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of dust samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(3)
Level 3	<u>15-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of paint samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(4)
Level 3a	<u>16-Target Housing and Child-occupied Facilities:</u> 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	<u>17-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 3a	<u>8-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment includes a visual inspection of the residential dwelling or child-occupied facility to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)
Level 3a	<u>19-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(d)(3)
Level 3a	<u>20-Target Housing and Child-occupied Facilities:</u> Failure to test for the presence of lead on each surface determined to have a distinct painting history, pursuant to 40 C.F.R. §745.227(d)(4)
Level 3a	<u>21-Residential Dwellings:</u> Failure to collect and analyze for lead concentration dust samples (either composite or single-surface samples) from the interior window sill(s) and floor(s) in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust, pursuant to 40 C.F.R. §745.227(d)(5)
Level 3a	<u>22-Multi-family Dwellings and Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration from the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(6)
Level 3a	<u>23-Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility pursuant to 40 C.F.R. §745.227(d)(7)
Level 3a	<u>24-Target Housing and Child-occupied Facilities:</u> Failure to collect and analyze soil samples for lead concentrations in the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(8)
Level 3a	<u>25-Target Housing and Child-occupied Facilities:</u> Failure to conduct all paint, dust, or soil sampling or testing using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(d)(9)
Level 3a	<u>26-Target Housing and Child-occupied Facilities:</u> Failure to analyze any collected paint chip, dust, or soil samples according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(d)(10)
Level 3a	<u>27-Target Housing and Child-occupied Facilities:</u> 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 1a	<u>28-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an abatement is conducted only by a person certified by EPA, and, if conducted, is conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(1)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>29-Target Housing and Child-occupied Facilities:</u> Failure of a supervisor to be onsite for each abatement project during all work site preparation, during the post-abatement cleanup of work areas, and to be onsite at other times during the abatement or available by telephone, pager or answering service and able to be present at the work site in no more than 2 hours, pursuant to 40 C.F.R. §745.227(e)(2)
Level 3a	<u>30-Target Housing and Child-occupied Facilities:</u> Failure of a supervisor and the certified firm employing that supervisor to ensure that all abatement activities are conducted according to the requirements of 40 C.F.R. §745.227(e) and all other Federal, State and local requirements, pursuant to 40 C.F.R. §745.227(e)(3)
Level 3a	<u>31-Target Housing and Child-occupied Facilities:</u> Failure of a renovation 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)
Level 3a	<u>32-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to include the designated information in each notification, pursuant to 40 C.F.R. §745.227(e)(4)(vi)
Level 2a	<u>33-Target Housing and Child-occupied Facilities:</u> Failure by a certified firm to accomplish written or electronic notification via one of the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(4)(vii)
Level 4a	<u>34-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to begin lead-based paint abatement activities on the date and at the location specified in either the original or updated notification, pursuant to 40 C.F.R. §745.227(e)(4)(viii)
Level 2a	<u>35-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to notify EPA before engaging in lead-based paint abatement activities defined in 40 C.F.R. §745.223, pursuant to 40 C.F.R. §745.227(e)(4)(ix)
Level 3a	<u>36-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to develop a written occupant protection plan for all abatement projects and in accordance with the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(5)
Level 2a	<u>37-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of open-flame burning or torching of lead-based paint during abatement activities pursuant to 40 C.F.R. §745.227(e)(6)(i)
Level 2a	<u>38-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of machines that remove lead-based paint through sanding, grinding, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency, pursuant to 40 C.F.R. §745.227(e)(6)(ii)
Level 2a	<u>39-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the dry scraping of lead-based paint unless it is used in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 6 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces, pursuant to 40 C.F.R. §745.227(e)(6)(iii)
Level 2a	<u>40-Target Housing and Child-occupied Facilities:</u> Failure to restrict the operating of a heat gun on lead-based paint at temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.227(e)(6)(iv)
Level 3a	<u>41-Target Housing and Child-occupied Facilities:</u> Failure to conduct soil abatement, when necessary, according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(7)
Level 3a	<u>42-Target Housing and Child-occupied Facilities:</u> Failure to have a certified inspector or risk assessor perform the post-abatement clearance procedures, pursuant to 40 C.F.R. §745.227(e)(8)
Level 3a	<u>43-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to perform a visual inspection after abatement to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present and to remove any hazards that still remain, pursuant to 40 C.F.R. §745.227(e)(8)(i)
Level 4a	<u>44-Target Housing and Child-occupied Facilities:</u> Failure to wait until the required visual inspection and any necessary post-abatement cleanups are completed before performing clearance sampling for lead in dust, pursuant to 40 C.F.R. §745.227(e)(8)(ii)
Level 1a	<u>45-Target Housing and Child-occupied Facilities:</u> Failure to take dust samples for clearance purposes using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(e)(8)(iii)

Revised -April, 2013

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 4a	<u>46-Target Housing and Child-occupied Facilities:</u> Failure to wait a minimum of 1 hour after completion of final post-abatement cleanup activities to collect dust samples for clearance purposes, pursuant to 40 C.F.R. §745.227(e)(8)(iv)
Level 4a	<u>47-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with containment between abated and unabated areas, pursuant to 40 C.F.R. §745.227(e)(8)(v)(A)
Level 4a	<u>48-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with no containment, pursuant to 40 C.F.R. §745.227(e)(8)(v)(B)
Level 4a	<u>49-Target Housing and Child-occupied Facilities:</u> Failure to conduct a visual inspection and clean horizontal, outdoor surfaces of visible dust and debris, perform visual inspection for paint chips on the dripline and remove and properly dispose of any paint chips found following an exterior paint abatement, pursuant to 40 C.F.R. §745.227(e)(8)(v)(C)
Level 4a	<u>50-Target Housing and Child-occupied Facilities:</u> Failure to select the rooms, hallways or stairwells for sampling according to documented methodologies, pursuant to 40 C.F.R. §745.227(e)(8)(vi)
Level 3a	<u>51-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to compare the residual lead level from dust samples with clearance levels to determine if level exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 2a	<u>52-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to reclean and retest the surface of components that were determined to have failed clearance testing after abatement, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 3a	<u>53-Target Housing and Child-occupied Facilities:</u> Failure to use the standard clearance levels for lead in dust of 40 µg/ft ² for floors, 250 µg/ft ² for interior window sills, and 400 µg/ft ² for window troughs to determine if a level in a sample exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(viii)
Level 4a	<u>54-Target Housing and Child-occupied Facilities:</u> Failure to perform random sampling in a multi-family dwelling with similarly constructed and maintained residential dwellings according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(9)
Level 4a	<u>55-Target Housing and Child-occupied Facilities:</u> 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)
Level 3a	<u>56-Target Housing and Child-occupied Facilities:</u> Failure to ensure that all paint chip, dust, or soil samples obtained are collected by a certified risk assessor or paint inspector and analyzed by an EPA-recognized laboratory, pursuant to 40 C.F.R. §745.227(f)
Level 5a	<u>57-Target Housing and Child-occupied Facilities:</u> Failure to limit composite dust sampling to only those situations specified, pursuant to 40 C.F.R. §745.227(g)
Level 3a	<u>58-Target Housing and Child-occupied Facilities:</u> Failure to make a determination on the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(h)
Level 1a	<u>59-Target Housing and Child-occupied Facilities:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.226 pursuant to 40 CFR § 745.233
Section XI Lead-Based Paint Risk Assessments	
Level 2a	1-Failure of a person performing a risk assessment to be certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 2a	2-Failure to conduct visual inspection for risk assessment or child-occupied facility to locate existence of deteriorated paint, assess extent and causes of deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)

Appendix B

Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR PRE, RRP, & LBP ACTIVITIES RULES⁴⁹

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:		one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18
Child-Occupied Facilities:		one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility (<i>e.g.</i> , as summer vacation) and there is no continuity of enrollment (<i>i.e.</i> , the same children are not returning after the break). ⁵⁰
For Violations Occurring On or Before 1/12/2009: ⁵¹				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,500
	Level 1b	\$ 11,000	\$ 7,740	\$ 2,580
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
	Level 2b	\$ 10,320	\$ 6,450	\$ 1,550
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 3b	\$ 7,740	\$ 5,160	\$ 780
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
	Level 4b	\$ 5,160	\$ 3,220	\$ 520
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 650
	Level 5b	\$ 2,680	\$ 1,800	\$ 260
	Level 6a	\$ 6580	\$ 1,680	\$ 260
	Level 6b	\$ 1,290	\$ 640	\$ 130

⁴⁹ Since the “nature” of violations for training providers is unique, separate matrices are provided on page B3.

⁵⁰ In a situation where there is “no continuity of enrollment,” there are no children’s parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

⁵¹ The maximum civil monetary penalty for TSCA is \$32,500 and \$11,000, respectively, for violations occurring after 3/15/2004 through 1/12/2009.

Appendix B

Gravity-Based Penalty Matrices

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:		one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18
Child-Occupied Facilities:		one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility (<i>e.g.</i> , as summer vacation) and there is no continuity of enrollment (<i>i.e.</i> , the same children are not returning after the break). ⁵²
For Violations Occurring After 1/12/2009: ⁵³				
HIGH	Level 1a	\$ 37,500	\$ 25,500	\$ 7,500
	Level 1b	\$ 16,000	\$ 8,500	\$ 2,840
	Level 2a	\$ 30,000	\$ 20,400	\$ 6,000
	Level 2b	\$ 11,340	\$ 7,090	\$ 1,710
MEDIUM	Level 3a	\$ 22,500	\$ 15,300	\$ 4,500
	Level 3b	\$ 8,500	\$ 5,670	\$ 850
	Level 4a	\$ 15,000	\$ 10,200	\$ 3,000
	Level 4b	\$ 5,670	\$ 3,540	\$ 580
LOW	Level 5a	\$ 7,500	\$ 5,100	\$ 1,500
	Level 5b	\$ 2,840	\$ 1,850	\$ 290
	Level 6a	\$ 3,000	\$ 2,040	\$ 600
	Level 6b	\$ 1,420	\$ 710	\$ 150

⁵² In a situation where there is “no continuity of enrollment,” there are no children’s parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

⁵³ The maximum civil monetary penalty for TSCA is \$37,500 and \$16,000, respectively, for violations occurring after 1/12/2009. Adjustments to the individual “a” levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

Appendix B

Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR TRAINING VIOLATIONS

Potential that the trainer's violations will affect human health by impairing the student's ability to learn:		Extent		
		MAJOR	SIGNIFICANT	MINOR
		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring On or Before 1/12/2009: ⁵⁴				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,450
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 640
	Level 6a	\$ 2,580	\$ 1,680	\$ 260

Potential that the trainer's violations will affect human health by impairing the students ability to learn:		Extent		
		MAJOR	SIGNIFICANT	MINOR
		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring After 1/12/2009: ⁵⁵				
HIGH	Level 1a	\$ 37,500	\$ 25,500	\$ 7,500
	Level 2a	\$ 30,000	\$ 20,400	\$ 6,000
MEDIUM	Level 3a	\$ 22,500	\$ 15,300	\$ 4,500
	Level 4a	\$ 15,000	\$ 10,200	\$ 3,000
LOW	Level 5a	\$ 7,500	\$ 5,100	\$ 1,500
	Level 6a	\$ 3,000	\$ 2,040	\$ 600

⁵⁴ The maximum civil monetary penalty is \$32,500 for violations occurring after 3/15/2004 through 1/12/2009.

⁵⁵ The maximum civil monetary penalty is \$37,500 for violations occurring after 1/12/2009. Adjustments to the individual levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

The EPA website for information on the TSCA 406(b) Pre-Renovation Education Rule is:
<http://www.epa.gov/lead/pubs/leadrenf.htm>

The EPA website also maintains copies of applicable policies and other useful information:

EPA Home Page: <http://www.epa.gov>

Compliance and Enforcement Home Page: <http://www.epa.gov/compliance/>

TSCA Enforcement Policy and Guidance Documents:
<http://cfpub.epa.gov/compliance/resources/policies/civil/tsca/>

Supplemental Environmental Projects:
<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>

Final Supplemental Environmental Projects Policy (1998):
<http://www.epa.gov/compliance/resources/policies/civil/seps/fnlsep-hermn-mem.pdf>

Treatment of Lead-based Paint Abatement Work as a Supplemental Environmental Project in Administrative Settlements (Jan 2004):
<http://www.epa.gov/compliance/resources/policies/civil/seps/leadbasedabatement-sep012204.pdf>

Audit Policy: <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>

Small Business Policy:
<http://www.epa.gov/compliance/incentives/smallbusiness/index.html>

Redelegation of Authority:
<http://www.epa.gov/compliance/resources/policies/civil/rcra/hqregenfcases-mem.pdf>

HUD Technical Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing: <http://www.hud.gov/offices/lead/lbp/hudguidelines/index.cfm>

Documenting Penalty Calculations and Justifications of EPA Enforcement Actions, (Aug 1990):
<http://www.epa.gov/compliance/resources/policies/civil/rcra/caljus-strock-mem.pdf>

Amendments to Penalty Policies to Implement Penalty Inflation Rule 2008
<http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>

The following list of potential Supplemental Environmental Projects (SEPs) is not exhaustive, but is intended to offer some examples.⁵⁶

- Abatement of lead-based paint and/or lead-based paint hazards in target housing or child-occupied facilities in compliance with requirements of 40 C.F.R. § 227(e).
- Renovation (such as window or door replacement) that includes removal of components containing lead-based paint and/or lead-based paint hazards from target housing or child-occupied facilities, followed by clearance testing as defined in 40 C.F.R. § 227(e)(8).
- Risk assessment of target housing or child-occupied facilities to identify lead-based paint hazards, followed by correction of any hazards identified.
- Purchase of an XRF for a local health organization.
- Blood-lead level screening and/or treatment for children where Medicaid coverage is not available. (Blood-lead level screening and/or treatment for children underserved by Medicaid may also be appropriate, with approval from the Special Litigation and Projects Division in OECA.)
- Purchase and operate a mobile health clinic, including outfitting the mobile units (*e.g.*, blood lead level testing and treatment for children in public housing).
- Purchase and donate lead health screening equipment to schools, public health departments, clinics, *etc.*
- Provide free lab tests for lead in dust, soil and paint chip samples; make testing available to low-income homeowners, small rental property owners, and community-based organizations.

⁵⁶ Whether the Agency decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within EPA's discretion. (*See, Supplemental Environmental Projects Policy, May 1, 1998, page 3.*)



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

JAN 11 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule

FROM: Susan Parker Bodine *Susan Parker Bodine*
Assistant Administrator

TO: Regional Administrators
Deputy Regional Administrators
Director, Office of Civil Enforcement

The purpose of this memorandum is twofold: (1) to amend all existing civil penalty policies to account for inflation and (2) to transmit the recently promulgated 2018 Civil Monetary Penalty Adjustment Rule (2018 Rule).¹ The 2018 Rule amends 40 C.F.R. § 19.4 to adjust the statutory civil penalties under the various environmental laws implemented by the EPA to account for inflation. The 2018 Rule was published on January 10, 2018, is effective on January 15, 2018, and is attached to this memorandum. The amendments to the EPA's penalty policies are also effective on January 15, 2018. This memorandum also clarifies the differences between the EPA's statutory maximum and minimum civil penalties and the EPA's penalty policies.

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act)² was signed into law on November 2, 2015, to improve the effectiveness of statutory maximum and minimum civil monetary penalties and to maintain their deterrent effect, thereby promoting compliance with the law. The 2015 Act instructed the EPA and other federal agencies to: (1) adjust the level of statutory maximum and minimum civil penalties with an initial "catch-up" rule; and (2) make subsequent annual adjustments for

¹ 83 Fed. Reg. 1190 (Jan. 10, 2018).

² 28 U.S.C. § 2461 note, Pub. L. 114-74 (see <https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf>).

inflation beginning in January 2017. The 2015 Act also prescribed the formula that federal agencies must follow in making these adjustments.

To fulfill the initial catch-up requirement, the EPA promulgated the 2016 Civil Monetary Penalty Inflation Adjustment Rule on August 1, 2016 (2016 Rule), which increased the EPA's statutory maximum and minimum civil penalties.³ To fulfill the second requirement of the 2015 Act requiring annual adjustments, the EPA made the first annual adjustment by promulgating the 2017 Civil Monetary Penalty Inflation Adjustment Rule, effective on January 15, 2017.⁴ The 2018 Rule, effective January 15, 2018, and transmitted herewith, makes the second annual adjustment.

Although not required by the 2015 Act, the EPA decided to amend its penalty policies in 2016 to better account for inflation going forward. While consistent with the purposes of the 2015 Act, these amendments and the methodology used in making these amendments are not governed by, and are distinct from, the 2015 Act and the 2018 Rule. To make these policy amendments, on July 27, 2016, the EPA's Office of Enforcement and Compliance Assurance (OECA) issued a memorandum that amended the EPA's penalty policies to account for inflation.⁵ That memorandum was effective on August 1, 2016. Because the subsequent increase in inflation was minimal from August 2016 to January 2017, the EPA decided to defer further modifying the penalty policies until January 2018. This memorandum thus amends the EPA's penalty policies to account for inflation to date. Looking ahead, the EPA plans to again amend its penalty policies to account for inflation in January 2020, barring any significant changes in inflation.

II. Applicability of this Memorandum

This memorandum supersedes the inflation-based amendments to the EPA's penalty policies made in the 2016 memorandum, but is not intended to change the methodology used in that memorandum. This memorandum partially supersedes the EPA's 2013 inflation amendments memorandum because the multipliers contained in the 2013 memorandum should still be used for violations that occurred on or before November 2, 2015.

This memorandum does not modify the EPA's Expedited Settlement Agreement penalty policies nor does it modify the non-penalty dollar amounts in civil penalty policies, such as the amounts deemed "insignificant" or "de minimis" that apply when calculating economic benefit of noncompliance.

³ The 2016 Rule was published on July 1, 2016, and became effective on August 1, 2016. 81 Fed. Reg. 43,091.

⁴ The Rule was published on January 12, 2017, and became effective on January 15, 2017. 82 Fed. Reg. 3633. The Office of Civil Enforcement within OECA issued a memorandum on January 13, 2017 transmitting the rule; that memorandum is titled *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule*.

⁵ The July 27, 2016 memorandum is titled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)*. Past inflation adjustment memoranda on the EPA's statutory maximum and minimum amounts and the EPA's penalty policies can be found here: <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>.

The penalty policies listed in Table A are the most recent narrative versions of each policy. The “narrative version” is the applicable media-specific penalty policy that comprehensively explains how the EPA enforcement practitioners should calculate penalties for purposes of administrative actions or settlements. This memorandum does not change or alter the narrative version of the media-specific penalty policies; this memorandum only alters the numerical gravity-based penalty amounts that are calculated under those policies to account for inflation.

Media enforcement programs may modify their penalty policies individually, and any such modifications may supersede application of this memorandum for that program. Practitioners should rely on the multipliers in Table A until the applicable penalty policy is modified or civil penalty policy amounts are adjusted by subsequent memorandum in accordance with inflation.

III. Amendments to the EPA’s Civil Penalty Policies

Consistent with the methodology used in the July 27, 2016, penalty policy inflation amendments memorandum, the EPA is amending its penalty policies through the use of multipliers listed in Table A of this memorandum. Please note that the multipliers listed in Table A should be used for violations occurring after November 2, 2015. **For violations occurring on or before November 2, 2015, use the multipliers listed in the December 6, 2013, inflation adjustment memorandum titled *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*.**⁶

A. Application of Inflation Multiplier to Gravity-Based Portion of Penalty

For each violation occurring after November 2, 2015, find the applicable penalty policy in Table A and use the policy to determine the initial calculated gravity-based penalty for your case.⁷ This initial gravity-based penalty will not be adjusted for inflation to reflect present value of the dollar. To adjust the penalty figure into present value, multiply the gravity-based portion of the penalty by the multiplier associated with the applicable penalty policy in Table A. Next, round the calculated gravity-based portion of the penalty amount to the nearest dollar.⁸ Then, if applicable, calculate the gravity-based portion of the penalty for each violation occurring on or before November 2, 2015, using the applicable

⁶ The December 6, 2013, memorandum can be found here: <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf>.

⁷ Most media specific penalty policies define “gravity” as the “seriousness of the violation.” Each media specific penalty policy uses specific factors to calculate the gravity component. Many of these factors are taken from their respective statutes and some factors are unique to that specific penalty policy. Therefore, it is important for case teams to review each specific penalty policy to understand how the gravity component is defined and how it is calculated.

⁸ We are instructing case teams to round to the nearest dollar because this was the approach taken in the 2015 Act, the EPA’s last penalty inflation memorandum from July 27, 2016, and the Office of Management and Budget’s (OMB) [February 24, 2016](#), and [December 15, 2017](#), memoranda that instructed federal agencies how to implement the 2016 Rule and 2018 Rule, respectively.

inflation multiplier from the guidance memorandum dated December 6, 2013. Add the gravity-based portion of the penalty for pre-November 3, 2015, violations to the gravity-based portion of the penalty for post-November 2, 2015, violations to calculate the total gravity-based penalty. Once the total gravity-based penalty has been calculated, incorporate economic benefit⁹ and any other factors (e.g., ability to pay, litigation considerations, etc.) that apply as instructed by the penalty policy to arrive at the total penalty.¹⁰

Enforcement practitioners should apply the multipliers in Table A only to the penalty amounts adopted within the “narrative” penalty policies listed in Table A. The multipliers in Table A should not be applied to penalty policies issued after the date of this memorandum unless expressly stated in the subsequent penalty policy.

B. Derivation of the Inflation Multipliers

Because the purpose of amending the EPA’s penalty policies is to account for inflation since the penalty policies were last amended for inflation in the July 27, 2016, memorandum, the majority of multipliers listed in Table A were calculated by multiplying the multipliers listed in the July 27, 2016 memorandum by the inflation increase that has occurred since the July 27, 2016 memorandum.¹¹

IV. 2018 Rule and the Newly Adjusted Statutory Maximum and Minimum Amounts

The 2018 Rule was promulgated to fulfill the annual statutory maximum and minimum inflation adjustment requirement in the 2015 Act. As instructed by the 2015 Act and as explained in the 2018

⁹ We are not modifying the long-standing approach of calculating economic benefit separately from the gravity-based amount, because economic benefit calculations already take inflation into account. The inflation adjustments in this guidance only apply to the gravity-based portion of the penalty.

¹⁰ If the total penalty amount calculated is greater than the statutory maximum amount, then the statutory maximum amount would apply. Similarly, the entire penalty sought (including economic benefit) in an administrative enforcement action cannot exceed any applicable administrative penalty caps. Note that penalty amounts greater than those calculated using the EPA penalty policies and this memorandum may be appropriate in limited circumstances. For example, in a formal administrative enforcement context, the EPA may seek, and presiding officers or the Environmental Appeals Board may assess, higher penalties provided such amounts do not exceed the statutory maximum, are in accordance with statutory civil penalty factors, and consider applicable civil penalty guidelines, and provided that any deviations from applicable penalty policies are persuasively and convincingly explained. *See, e.g.*, 40 C.F.R. § 22.27(b) and *In Re Morton L. Friedman & Schmitt Construction Company*, 11 E.A.D. 302 (EAB 2004).

¹¹ In the July 27, 2016 memorandum, most of the multipliers were calculated using the increase established by the Consumer Price Index for all Urban Consumers (CPI-U) from the date the penalty policy was issued through October 2015. For the multipliers listed in Table A of this memorandum, we multiplied these figures from the July 27, 2016 memorandum by the CPI-U increase from October 2015 to October 2017. We used the October 2017 figure because this figure was used for calculating the statutory increases in the 2018 Rule. The October 2017 CPI-U was 246.663 and the October 2015 CPI-U was 237.838, yielding an increase of 1.03711. The only multiplier that does not follow this calculation framework is the EPCRA Enforcement Response Policy, which was amended on February 24, 2017 and uses 1.03711 as the multiplier in Table A of this memorandum. *See infra* note 21.

Rule, the EPA calculated the new penalty amounts by multiplying the cost-of-living multiplier¹² by the previous statutory penalty amount as adjusted by the 2017 Rule. The result is the amount listed in the farthest column on the right in Table 2 of 40 C.F.R. § 19.4 and the 2018 Rule. This amount applies to violations occurring after November 2, 2015.

A. Penalty Pleading in Administrative Litigation

Where the EPA decides to cite the statutory maximum and/or minimum penalty amount in an administrative pleading (such as in an administrative complaint), the applicable statutory maximum and/or minimum penalty amount in effect for the violations should be used.¹³ The EPA should cite the statutory maximum and minimum penalty provisions and 40 C.F.R. § 19.4, along with the applicable inflation-adjusted penalty maximum levels set forth in 40 C.F.R. § 19.4. Multiple penalty-adjustment cycles should only be used when violations occurred on or before November 2, 2015 and after November 2, 2015. If this arises, the EPA should cite each applicable penalty-adjustment cycle and the corresponding penalty amount. Particularly where violations have occurred both after November 2, 2015, and before such date, case teams also may find it helpful to state that the statutory maximum and minimum civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701).

B. Statutory Administrative Penalty Caps

Note that, effective January 15, 2018, where the EPA seeks administrative penalties in a complaint, amended complaint, or through a 40 C.F.R. § 22.18 settlement, the increased administrative penalty caps in Table 2 of § 19.4 in the attached 2018 Rule apply if *some or all* of the violations occurred after November 2, 2015. The lower administrative penalty caps in Table 1 of § 19.4 apply if *all* violations occurred on or before November 2, 2015.

V. Multiple Penalty Cycles – Case Team Discretion

If the time period between seeking a penalty (through settlement or litigation) and the final penalty assessment¹⁴ covers more than one penalty-adjustment cycle (for example, where a complaint is filed on

¹² The statutory cost-of-living adjustment multiplier is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016. The October 2017 CPI-U was 246.663 and the October 2016 CPI-U was 241.729, yielding an increase of 1.02041.

¹³ If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Office of Civil Enforcement of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

¹⁴ Note that enforcement personnel can only *seek* penalties. *Assessment* of penalties is effective in a formal administrative action once a final penalty order is filed with the Hearing Clerk, 40 C.F.R. §§ 22.31 and 22.6, or in civil judicial cases once the court enters a consent decree or issues a judgment awarding penalties.

December 15, 2016, but the final penalty order is not filed with the Hearing Clerk until April 1, 2018), the case team would have discretion to modify the penalty amount sought (for example, to be consistent with the penalty amounts in the most recent annual inflation adjustment rule or guidance). But such modifications would *not* be expected where doing so would be:

- a. unnecessary to achieve sufficient deterrence; and
- b. *either* inappropriately disruptive¹⁵ *or* contrary to principles of judicial economy (for example, where the case has already gone to hearing based on previous penalty amounts).

In a settlement context, if defendants or respondents have signed a consent decree or consent agreement, the EPA would not expect the case team to renegotiate the penalty amount due to subsequent inflation adjustments. Prior to any such formal written settlement commitment (for example, where the parties may have reached an agreement in principle), case teams have discretion to decide whether to modify their penalty demand due to subsequent inflation adjustments (for example, depending on how far along the negotiations have progressed, the likely impact of an increased penalty on negotiations, the case team's evaluation of the likelihood that any informal agreements will not be consummated, and/or other factors).

VI. Further Information

Our goal in issuing this guidance is to make these penalty policy modifications easy to implement, but if you have any questions concerning this memorandum, please contact David Smith-Watts of the Office of Civil Enforcement at (202) 564-4083 or by email at smith-watts.david@epa.gov.

cc: Lawrence Starfield, Principal Deputy Assistant Administrator, OECA
Patrick Traylor, Deputy Assistant Administrator, OECA
Regional Counsels
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance, Region II
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III
Director, Air, Pesticides and Toxics Management Division, Region IV
Director, Office of Enforcement and Compliance Assurance, Region V
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Enforcement Coordination Office, Region VII

¹⁵ Such disruption could be to settlement negotiations, or to other case efforts such as creating an undue burden on the EPA's resources. If the EPA has not made a penalty demand or offer, a disruptive impact on negotiations is less likely where the penalty is recalculated to be consistent with the most recent inflation-adjustment amounts. It is possible, however, that a recalculation would be unduly burdensome and disruptive to the case team's efforts where, for example, there are an extremely large number of violations, the penalty calculation is complex, and/or where contractor resources are needed to perform such a calculation. In such circumstances, the case team would have discretion to determine that recalculating the penalty is not warranted even though the EPA has not yet made a penalty demand or offer.

Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII
Director, Enforcement Division, Region IX
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X
Regional Media Division Directors
Regional Superfund Enforcement Directors
Regional Enforcement Coordinators
All OECA Employees
Tom Mariani, Chief, DOJ-EES
Deputy and Assistant Chiefs, DOJ-EES
Kathie Stein, Environmental Appeals Judge
Susan Biro, Chief Administrative Law Judge
Regional Judicial Officers

Attachments (2)

1. Table A: Chart Reflecting Inflation Adjustment Multipliers
2. Rule promulgated in the *Federal Register* on January 10, 2018

Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers

Applicable Penalty Policy	Year Issued	Inflation Adjustment Multiplier as of January 15, 2018
CWA		
<u>Interim Clean Water Act Settlement Penalty Policy</u>	1995	1.60484
<u>Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act</u>	1998	1.50405 ¹⁶
<u>CWA Section 404 Settlement Penalty Policy</u>	2001	1.38809
<u>Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements</u>	2008	1.13894
SDWA		
<u>UIC Program Judicial and Administrative Order Settlement Penalty Policy</u>	1993	1.69296
<u>New Public Water System Supervision Program Settlement Penalty Policy</u>	1994	1.64993

¹⁶ Case teams should apply the multiplier of 1.84767 to the per-barrel discharge penalty amounts in the last column of the penalty matrix on page 11. This is an appropriate multiplier because such civil penalties under CWA § 311(b)(7)(A) & (D) concern environmental exposure (*i.e.*, the discharge of oil and hazardous substances), and because the per-barrel penalty matrix column contained in the 1998 penalty policy reflects the statutory maximum penalty amounts in effect when this penalty authority was enacted in 1990. It is important for the penalty matrix to retain a maximum per-barrel penalty policy amount that equals the current statutory maximum and to increase the other penalty policy matrix cells proportionally by the same inflation adjustment multiplier.

CAA – Accidental Release Prevention/Risk Management Program		
<u>Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68</u>	2012	1.06635
CAA – Stationary Source		
<u>Clean Air Act Stationary Source Civil Penalty Policy</u>	1991	1.79523
<u>Appendix I – Penalty Policy for Violation of Permit Requirements</u>	1987	2.13933
<u>Appendix II - Vinyl Chloride Civil Penalty Policy</u>	1985	2.26922
<u>Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy</u>	1992	1.73952
<u>Appendix IV - Clean Air Act Penalty Policy as Applied to Stationary Sources of Volatile Organic Compounds (VOC) Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance</u>	1987	1.79523 ¹⁷
<u>Appendix VI - Leak Detection and Repair Penalty Policy</u>	2012	1.06635
<u>Appendix VII – Penalty Policy for New Residential Wood Heaters</u>	1989	1.96388

¹⁷ For violations governed by Appendix IV, the EPA is using the same multiplier that applies to the 1991 “*Clean Air Act Stationary Source Civil Penalty Policy*” because the gravity-based component of such violations is calculated using the 1991 policy.

<u>Appendix VIII - Clean Air Act Civil Penalty Policy Applicable to Persons Who Manufacture or Import Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone</u>	1990	1.84767
<u>Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners</u>	1993	1.69296
<u>Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant</u>	1994	1.64993
<u>Appendix XI - National Petroleum Refinery Initiative Implementation: Application of Clean Air Action Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements</u>	2007	1.18057
<u>EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington. 40 C.F.R. Part 49</u>	2008	1.13894
CAA – Mobile Source		
<u>Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements</u>	2009	1.14103
<u>Clean Air Act Mobile Source Fuels Civil Penalty Policy Title II of the Clean Air Act --40 C.F.R. Part 80 Fuels Standards Requirements</u>	2016	1.03711

North American and U.S. Caribbean Sea Emissions Control Areas Penalty Policy for Violations by Ships of the Sulfur in Fuel Standard and Related Provisions	2015	1.03711
Civil Penalty Policy for Administrative Hearings	1993	1.69296
RCRA		
RCRA Civil Penalty Policy	2003	1.53790 ¹⁸
Guidance on the Use of Section 7003 of RCRA	1997	2.64426 ¹⁹
Guidance for Federal Field Citation Enforcement	1993	1.69296
U.S. EPA Penalty Guidance for Violations of UST Regulations	1990	1.84767
CERCLA		
Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders	1997	2.03299 ²⁰
CERCLA & EPCRA		
Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act	1999	1.46649

¹⁸ The 2003 RCRA civil penalty policy contains the applicable narrative text that practitioners should continue to use.

¹⁹ For RCRA section 7003(b) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$14,543.

²⁰ For CERCLA section 106(b)(1) penalties, the EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$55,907.

EPCRA		
Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990), February 24, 2017 (Amended)	2017	1.03711 ²¹
FIFRA		
FIFRA Enforcement Response Policy (FIFRA ERP)	2009	1.14103
Appendix E to FIFRA ERP - Enforcement Response Policy for FIFRA Section 7(c): Establishment Reporting Requirements	2010	Use the 2009 FIFRA ERP and the 1.14103 multiplier
Appendix F to FIFRA ERP - Interim Final Penalty Policy for the Worker Protection Standard	1997	Use the 2009 FIFRA ERP and the 1.14103 multiplier
Appendix G to FIFRA ERP - Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Good Laboratory Practice (GLP) Regulations	1991	Use the 2009 FIFRA ERP and the 1.14103 multiplier
Appendix H to the FIFRA ERP - Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations	2012	Use the 2009 FIFRA ERP and the 1.14103 multiplier
TSCA		
Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substance Control Act	1980	1.55567

²¹ On February 24, 2017, the EPCRA Enforcement Response Policy was amended in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule. The current penalty policy maximum amount of \$40,779 is multiplied by 1.03711 (the CPI-U adjustment from October 2015 to October 2017) to yield a new maximum amount of \$42,292.

Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13	1999	1.55567 ²²
Amendment to the TSCA Section 5 Enforcement Response Policy – Penalty Limit for Untimely NOC Submissions	1993	1.55567
Enforcement Response Policy for TSCA §4 Test Rules	1986	1.55567
Final TSCA GLP Enforcement Response Policy	1985	1.55567
TSCA – Asbestos		
Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP) – Addendum to the AHERA ERP	1998	1.50405
Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act	1989	1.96388
Enforcement Response Policy for Asbestos Abatement Projects: Worker Protection Rule	1989	1.55567
TSCA – Lead-Based Paint		
Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education (PRE) Rule; Renovation, Repair and Painting (RRP) Rule; and Lead-Based Paint Activities (LBPA) Rule	2010	1.03711

²² The “Penalty Matrix For Violations Occurring After January 30, 1997” on page 8 of this policy should be ignored. For all violations governed by this policy, the multiplier should be applied to the penalty amounts in the “Penalty Matrix For Violations Occurring On or Before January 30, 1997” found on the same page.

Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy	2007	1.58136
TSCA – PCBs		
Polychlorinated Biphenyls (PCB) Penalty Policy	1990	1.55567

is incorporated by reference in the Code of Federal Regulations, and thus more effective in supporting USPS efforts related to compliance and enforcement. The Postal Service expects that incorporation by reference of Publication 52 in the *Code of Federal Regulations*, will increase the visibility of the mailing standards contained in Publication 52 and thereby maximize their effectiveness and usefulness.

Since their removal from the DMM, the mailing standards provided in Publication 52 have undergone few changes of significance; indeed, several of those changes have expanded the options available to HAZMAT mailers. With regard to changes having a wider impact on mailers, such as those required to conform Publication 52 to the revised standards for the shipment of lithium batteries established by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the International Civil Aviation Organization (ICAO), the Postal Service has been careful to provide advance notice to interested parties, with an opportunity to comment, and to shape the final standards in response to the comments received. *See, e.g.* 82 FR 11372 (February 22, 2017), and 82 FR 34712 (July 26, 2017). Relating to violations of mailing standards for hazardous materials, the Postal Service currently has civil enforcement authority granted by the Postal Accountability and Enhancement Act of 2006, and authority to assess criminal penalties under 18 U.S.C. 1716. As a result, the Postal Service believes that the incorporation by reference of Publication 52 should have little or no impact on mailers of hazardous, restricted, or perishable materials, and the Postal Service would expect few comments in response to a proposed rule. Accordingly, the Postal Service has chosen to publish only a final rule in support of this action.

The Postal Service further believes that incorporation by reference of Publication 52 is justified in view of the unique qualities of the publication, including its length, the detailed description of conditions relating to the mailing of hazardous, restricted, or perishable materials, and the presence of numerous color figures and images in the document. In addition, the potential for serious injury to Postal Service employees and the general public, as well as the potential for damage to USPS equipment and other assets resulting from improperly prepared, packaged, or marked hazardous materials, provide support for the incorporation by reference of a separate

publication dealing specifically with such matters.

List of Subjects in 39 CFR Part 113

Hazardous, restricted, and perishable mail, Incorporation by reference.

■ In consideration of the matters discussed above, the Postal Service adds new 39 CFR part 113 as follows:

PART 113—HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL

Sec.

113.1 Scope and purpose.

113.2 Incorporation by reference.

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

§ 113.1 Scope and purpose.

This part applies to the mailing and shipment of hazardous, restricted, and perishable materials. In order to mail hazardous, restricted, and perishable materials, mailers must properly prepare their mailings in accordance with the standards contained in USPS Publication 52 (incorporated by reference, see § 113.2).

§ 113.2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection by appointment only, during normal hours of operation, at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW, Washington, DC 20260–1641 (call 202–268–2906), and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(b) United States Postal Service, Product Classification Office, USPS Headquarters, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5013: <http://pe.usps.com/text/pub52/welcome.htm>.

(1) *Publication 52, Hazardous, Restricted and Perishable Mail, dated August 2017, IBR approved for § 113.1.*

(2) [Reserved]

Stanley F. Mires,
Attorney, Federal Compliance.

[FR Doc. 2018–00266 Filed 1–9–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 19

[FRL–9972–92–OECA]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of statutory civil monetary penalty amounts under the statutes EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“the 2015 Act”). The 2015 Act prescribes a formula for annually adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA’s civil penalty policies, which guide enforcement personnel in how to exercise EPA’s statutory penalty authorities, take into account a number of fact-specific considerations, *e.g.*, the seriousness of the violation, the violator’s good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator’s ability to pay.

DATES: This final rule is effective on January 15, 2018.

FOR FURTHER INFORMATION CONTACT: David Smith-Watts, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2241A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone number: (202) 564–4083; smith-watts.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1990, federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties¹ that can be imposed under

¹ The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 28 U.S.C. 2461 note, defines “civil monetary penalty” as “any penalty, fine, or other sanction that—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.”

the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil penalties every 4 years, and to adjust the statutory civil penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, EPA reviewed and, as appropriate, adjusted the civil penalty levels under each of the statutes the agency implements in 1996 (61 FR 69360), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643).

The 2015 Act² requires agencies to: (1) Adjust the level of statutory civil penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. The purpose of the 2015 Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar.

As required by the 2015 Act, EPA issued a catch up rule on July 1, 2016, which was effective August 1, 2016 (81 FR 43091), and EPA made its first annual adjustment on January 12, 2017, which was effective January 15, 2017 (82 FR 3633). Today's rule implements the second annual penalty inflation adjustments mandated by the 2015 Act. Section 4 of the 2015 Act requires each federal agency to publish annual adjustments to all civil penalties under the laws implemented by that agency. These annual adjustments are required to be published by January 15 of each year. The 2015 Act describes the method for calculating the adjustments. Each statutory maximum civil monetary penalty is multiplied by the cost-of-living adjustment, which is the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2017 exceeds the CPI-U for the month of October 2016.

With this rule, the new statutory maximum (or minimum³) penalty levels

listed in the sixth column of Table 2 of 40 CFR 19.4 will apply to all civil penalties assessed on or after January 15, 2018, for violations that occurred after November 2, 2015, when the 2015 Act was enacted. The former maximum statutory civil penalty levels, which are in the fifth column of Table 2 to 40 CFR 19.4, will now apply only to violations that occurred after November 2, 2015, where the penalties were assessed on or after January 15, 2017 but before January 15, 2018. The statutory penalty levels for violations that occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 but before January 15, 2017, are codified in the fourth column of Table 2 to 40 CFR 19.4. The statutory civil penalty levels that apply to violations that occurred on or before November 2, 2015, are codified at Table 1 to 40 CFR 19.4.

The formula for determining the cost-of-living or inflation adjustment to statutory civil penalties consists of the following steps:

Step 1: The cost-of-living adjustment multiplier for 2018, based on the CPI-U of October 2017, is 1.02041.⁴ Multiply 1.02041 by the current penalty amount. This is the raw adjusted penalty value.

Step 2: Round the raw adjusted penalty value. Section 5 of the 2015 Act states that any adjustment shall be rounded to the nearest multiple of \$1. The result is the final penalty value for the year.

II. The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedures Act

Section 4 of the 2015 Act directs federal agencies to publish the second annual adjustments no later than January 15, 2018. In accordance with section 553 of the Administrative Procedures Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, Section 4(b)(2) of the 2015 Act provides that each agency shall make

the annual inflation adjustments "notwithstanding section 553" of the APA. According to OMB guidance issued to Federal agencies on the implementation of the 2018 annual adjustment,⁵ the phrase "notwithstanding section 553" means that "the public procedure the APA generally provides—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment." Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil penalties that can be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. Because the 2015 Act directs Federal agencies to publish this rule notwithstanding section 553 of the APA, this rule is not subject to notice and comment requirements or the RFA.

² The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) was signed into law on Nov. 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

³ Under Section 3(2)(A) of the 2015 Act, "civil monetary penalty" means "a specific monetary amount as provided by Federal law"; or "has a maximum amount provided for by Federal law." EPA-administered statutes generally refer to statutory maximum penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of "not less than \$100,000 . . ."; Section

104B(d)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414b(d)(1), refers to an exact penalty of \$600 "[f]or each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by the person in violation of this subsection in calendar year 1992 . . ."; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11045(d)(1), refers to an exact civil penalty of \$25,000 for each frivolous trade secret claim.

⁴ Office of Management and Budget Memorandum, *Implementation of the Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum M–18–03) at p. 1 (December 15, 2017).

⁵ See OMB Memorandum M–18–03 at p. 4.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, EPA has no policy discretion to vary the amount of the adjustment.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule merely reconciles the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute, and EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

The rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. Rather, this action is mandated by the 2015 Act, which prescribes a formula for adjusting statutory civil penalties on an annual basis to reflect inflation.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The 2015 Act directs Federal agencies to publish their annual penalty inflation adjustments “notwithstanding section 553 [of the APA].” Because OMB has instructed Federal agencies that this provision means that “notice, an opportunity for comment, and a delay in the effective date” are not required for agencies to issue regulations implementing the annual adjustment,⁶ EPA finds that the APA’s notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest.

List of Subjects in 40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

Dated: January 3, 2018.

E. Scott Pruitt,
Administrator.

For the reasons set out in the preamble, EPA amends title 40, chapter I, part 19 of the Code of Federal Regulations as follows:

⁶ See OMB Memorandum M–18–03 at p. 4.

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 19 continues to read as follows:

Authority: Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XIII, sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 599.

■ 2. Revise § 19.2 to read as follows:

§ 19.2 Effective date.

The statutory penalty levels in the last column of Table 1 to § 19.4 apply to all violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties were assessed before August 1, 2016. The statutory civil penalty levels set forth in the fourth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed on or after August 1, 2016 and before January 15, 2017. The statutory civil penalty levels set forth in the fifth column of Table 2 of § 19.4 apply to all violations which occurred after November 2, 2015, where the penalties were assessed after January 15, 2017 but before January 15, 2018. The statutory civil penalty levels set forth in the sixth and last column of Table 2 of § 19.4 apply to all violations which occur or occurred after November 2, 2015, where the penalties are assessed after January 15, 2018.

■ 3. In § 19.4, revise the introductory text and table 2 to read as follows:

§ 19.4 Statutory civil penalties, as adjusted for inflation, and tables.

Table 1 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, and the operative statutory civil penalty levels, as adjusted for inflation, for violations that occurred on or before November 2, 2015, and for violations that occurred after November 2, 2015, where penalties were assessed before August 1, 2016. Table 2 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the third column displaying the original statutory civil penalty levels, as enacted. The fourth column of Table 2 displays the operative statutory civil penalty levels where penalties were assessed on or after August 1, 2016 but before January 15, 2017, for violations that occurred after November 2, 2015. The fifth column displays the operative statutory civil penalty levels

where penalties are assessed on or after January 15, 2017 but before January 15, 2018, for violations that occur or occurred after November 2, 2015. The

sixth and last column displays the operative statutory civil penalty levels where penalties are assessed on or after January 15, 2018, for violations that

occur or occurred after November 2, 2015.

* * * * *

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018
7 U.S.C. 136l(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	\$5,000	\$18,750	\$19,057	\$19,446
7 U.S.C. 136l(a)(2) ¹	FIFRA	1,000/500/1,000	2,750/1,772/2,750	2,795/1,801/2,795	2,852/1,838/2,795
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	25,000	37,500	38,114	38,892
15 U.S.C. 2647(a)	TSCA	5,000	10,781	10,957	11,181
15 U.S.C. 2647(g)	TSCA	5,000	8,908	9,054	9,239
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA).	5,000	10,781	10,957	11,181
31 U.S.C. 3802(a)(2)	PFCRA	5,000	10,781	10,957	11,181
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	25,000	51,570	52,414	53,484
33 U.S.C. 1319(g)(2)(A)	CWA	10,000/25,000	20,628/51,570	20,965/52,414	21,393/53,484
33 U.S.C. 1319(g)(2)(B)	CWA	10,000/125,000	20,628/257,848	20,965/262,066	21,393/267,415
33 U.S.C. 1321(b)(6)(B)(i)	CWA	10,000/25,000	17,816/44,539	18,107/45,268	18,477/46,192
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	10,000/125,000	17,816/222,695	18,107/230,338	18,477/230,958
33 U.S.C. 1321(b)(7)(A)	CWA	25,000/1,000	44,539/1,782	45,268/1,811	46,192/1,848
33 U.S.C. 1321(b)(7)(B)	CWA	25,000	44,539	45,268	46,192
33 U.S.C. 1321(b)(7)(C)	CWA	25,000	44,539	45,268	46,192
33 U.S.C. 1321(b)(7)(D)	CWA	100,000/3,000	178,156/5,345	181,071/5,432	184,767/5,543
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	600	1,187	1,206	1,231
33 U.S.C. 1415(a)	MPRSA	50,000/125,000	187,500/247,336	190,568/251,382	194,457/256,513
33 U.S.C. 1901 note (see 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO).	10,000/25,000	13,669/34,172	13,893/34,731	14,177/35,440
33 U.S.C. 1901 note (see 1409(a)(2)(B)).	CACSO	10,000/125,000	13,669/170,861	13,893/173,656	14,177/177,200
33 U.S.C. 1901 note (see 1409(b)(1)).	CACSO	25,000	34,172	34,731	35,440
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS).	25,000	70,117	71,264	72,718
33 U.S.C. 1908(b)(2)	APPS	5,000	14,023	14,252	14,543
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT (SDWA) ..	25,000	53,907	54,789	55,907
42 U.S.C. 300g-3(g)(3)(A)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300g-3(g)(3)(B)	SDWA	5,000/25,000	10,781/37,561	10,957/38,175	11,181/38,954
42 U.S.C. 300g-3(g)(3)(C)	SDWA	25,000	37,561	38,175	38,954
42 U.S.C. 300h-2(b)(1)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300h-2(c)(1)	SDWA	10,000/125,000	21,563/269,535	21,916/273,945	22,363/279,536
42 U.S.C. 300h-2(c)(2)	SDWA	5,000/125,000	10,781/269,535	10,957/273,945	11,181/279,536
42 U.S.C. 300h-3(c)	SDWA	5,000/10,000	18,750/40,000	19,057/40,654	19,446/41,484
42 U.S.C. 300i(b)	SDWA	15,000	22,537	22,906	23,374
42 U.S.C. 300i-1(c)	SDWA	100,000/1,000,000	131,185/1,311,850	133,331/1,333,312	136,052/1,360,525
42 U.S.C. 300j(e)(2)	SDWA	2,500	9,375	9,528	9,722
42 U.S.C. 300j-4(c)	SDWA	25,000	53,907	54,789	55,907
42 U.S.C. 300j-6(b)(2)	SDWA	25,000	37,561	38,175	38,954
42 U.S.C. 300j-23(d)	SDWA	5,000/50,000	9,893/98,935	10,055/100,554	10,260/102,606
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	10,000	16,773	17,047	17,395
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	10,000	35,445	36,025	36,760
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	25,000	93,750	95,284	97,229
42 U.S.C. 6928(c)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6928(g)	RCRA	25,000	70,117	71,264	72,718
42 U.S.C. 6928(h)(2)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6934(e)	RCRA	5,000	14,023	14,252	14,543
42 U.S.C. 6973(b)	RCRA	5,000	14,023	14,252	14,543
42 U.S.C. 6991e(a)(3)	RCRA	25,000	56,467	57,391	58,562
42 U.S.C. 6991e(d)(1)	RCRA	10,000	22,587	22,957	23,426
42 U.S.C. 6991e(d)(2)	RCRA	10,000	22,587	22,957	23,426
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	25,000	93,750	95,284	97,229
42 U.S.C. 7413(d)(1)	CAA	25,000/200,000	44,539/356,312	45,268/362,141	46,192/369,532
42 U.S.C. 7413(d)(3)	CAA	5,000	8,908	9,054	9,239
42 U.S.C. 7524(a)	CAA	25,000/2,500	44,539/4,454	45,268/4,527	46,192/4,619
42 U.S.C. 7524(c)(1)	CAA	200,000	356,312	362,141	369,532
42 U.S.C. 7545(d)(1)	CAA	25,000	44,539	45,268	46,192
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	25,000	53,907	54,789	55,907
42 U.S.C. 9606(b)(1)	CERCLA	25,000	53,907	54,789	55,907
42 U.S.C. 9609(a)(1)	CERCLA	25,000	53,907	54,789	55,907

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after August 1, 2016 but before January 15, 2017	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2017 but before January 15, 2018	Statutory civil penalties for violations that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018
42 U.S.C. 9609(b)	CERCLA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 9609(c)	CERCLA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)	25,000	53,907	54,789	55,907
42 U.S.C. 11045(b)(1)(A)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 11045(b)(2)	EPCRA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(b)(3)	EPCRA	25,000/75,000	53,907/161,721	54,789/164,367	55,907/167,722
42 U.S.C. 11045(c)(1)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 11045(c)(2)	EPCRA	10,000	21,563	21,916	22,363
42 U.S.C. 11045(d)(1)	EPCRA	25,000	53,907	54,789	55,907
42 U.S.C. 14304(a)(1)	MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT)	10,000	15,025	15,271	15,583
42 U.S.C. 14304(g)	BATTERY ACT	10,000	15,025	15,271	15,583

¹ Note that 7 U.S.C. 1361(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of \$1,000 and the \$500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95–396), and the second mention of \$1,000 was enacted in 1972 (Pub. L. 92–516).

[FR Doc. 2018–00287 Filed 1–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0085; FRL–9972–85–Region 4]

Air Plan Approval; NC; Open Burning and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Due to adverse comments received, the Environmental Protection Agency (EPA) is amending the North Carolina State Implementation Plan (SIP) to remove some provisions made effective through the direct final rule that was published on July 18, 2017. EPA stated that if adverse comments were received by the close of the comment period, the rule would be withdrawn and not take effect, or if adverse comments were received on an amendment, paragraph, or section of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. EPA received adverse comments on two specific SIP revisions. Therefore, EPA is removing only the portions of the SIP related to those two revisions.

DATES: This rule is effective January 10, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–0085. All documents in the docket are listed on the www.regulations.gov

website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Ward can be reached via telephone at (404) 562–9140, or via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION: On July 18, 2017, EPA published a direct final rule (82 FR 32767) approving several revisions to the North Carolina SIP. The revisions consisted of changes to or the addition of the following regulations: 15A NCAC Subchapter 2D—Air

Pollution Control Requirements, Section .0101, *Definitions*; Section .0103, *Copies of Referenced Federal Regulations*; Section .1901 *Purpose, Scope, and Impermissible Open Burning Section*; .1902, *Definitions*; Section .1903, *Permissible Open Burning Without An Air Quality Permit*; Section .2001, *Purpose, Scope, and Applicability*; and 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0103, *Definitions*; Section .0105, *Copies of Referenced Documents*; Section .0304, *Applications*; Section .0305, *Application Submittal Content*; Section .0806, *Cotton Gins*; Section .0808, *Peak Shaving Generators*; and Section .0810, *Air Curtain Burners*. On the same day, EPA published proposed rule (82 FR 32782), proposing approval of those same revisions to the North Carolina SIP and providing a 30-day comment period for both the direct final rule and the proposed rule.¹ The direct final rule explained that if EPA received adverse comments, the Agency would withdraw the relevant portion(s) of the direct final action. EPA received adverse comments on the portions of the rulemaking related to the North Carolina regulations 15A NCAC Subchapter 2Q—Air Quality Permits, Section .0808, *Peak Shaving Generators*, and Section .0810, *Air Curtain Burners*, only. However, EPA was not able to withdraw these portions of the direct final action before the action became effective. Therefore, EPA is amending § 52.1770 by removing the portions of the SIP related to these two North Carolina regulations. EPA is not

¹ On September 6, 2017 (82 FR 42055), EPA reopened the comment period for the proposed rule, with comments due on or before September 21, 2017.



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

JUN 29 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action

FROM: Susan Shinkman, Director
Office of Civil Enforcement (OCE)

Cynthia L. Mackey, Director
Office of Site Remediation Enforcement (OSRE)

TO: Regional Counsel
Regional Enforcement Division Directors
Regional Enforcement Coordinators
OECA Office and Division Directors

Since the early days of the U.S. Environmental Protection Agency's (the EPA or the Agency) enforcement program, it has been fundamental that the Agency's enforcement actions deter violators and the regulated community from failing to comply with environmental requirements. To achieve this deterrence, EPA's enforcement actions should, at a minimum, recover any economic benefit gained by the violator as a result of its noncompliance and a gravity-based penalty to account for the seriousness and duration of the violation.¹ While the Agency seeks to obtain civil penalties that provide for both specific and general deterrence, the EPA may reduce the civil penalty sought if the violator produces information demonstrating its inability to pay the proposed penalty.

I. Purpose and Scope

This guidance supplements existing guidance issued by the Office of Enforcement and Compliance Assurance (OECA) on how to assess a violator's claim that it lacks the ability to pay all or part of a civil penalty to be assessed as part of an enforcement action. Specifically, this guidance builds upon and does not supersede the 1986 guidance on *Determining a Violator's*

¹ See *Policy on Civil Penalties*, EPA General Enforcement Policy GM-21 (Feb. 16, 1984)(GM-21); *A Framework for Statute-Specific Approaches to Penalty Assessments*, EPA General Enforcement Policy GM-22 (Feb. 16, 1984) (GM-22).

Ability to Pay a Civil Penalty, Thomas L. Adams, Jr. (Dec. 16, 1986), or the *General Policy on Superfund Ability to Pay Determinations*, Barry Breen (Sept. 30, 1997)(1997 Superfund Policy).²

This 2015 guidance describes the steps case teams should follow in evaluating ability-to-pay (ATP) claims, and provides an overview of the Agency’s tools to assist practitioners in ATP evaluations. It also provides guidance on the type of documentation to consider when determining whether the EPA may accept extended payment plans for administrative penalties. Moreover, the guidance describes, where appropriate, how to structure extended payments.

This guidance applies to EPA administrative enforcement matters involving ATP claims raised by individuals, for-profit entities (including sole proprietorships, corporations, partnerships, limited liability companies (LLCs), and for-profit utilities), governmental entities, federally recognized Indian tribal entities, and not-for-profit entities. This guidance does not apply to federal agencies.³

The tools and approaches discussed here may also be useful for civil judicial cases referred by the EPA to the U.S. Department of Justice (DOJ). After a case has been referred, the EPA and the DOJ will work together to determine whether additional information should be collected. The DOJ may rely on EPA’s financial analyst,⁴ either internal or retained by the Agency, or the DOJ may engage its own analyst.

II. Burden of Proof

A. Where ATP is a Statutory Factor for the EPA to Consider in Determining the Appropriate Penalty

Pursuant to 40 C.F.R. § 22.24, the EPA, as the complainant, “has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed penalty . . . is appropriate.” As to the appropriateness of a proposed penalty, the burden is on the EPA to prove that it has taken into account the applicable statutory penalty factors. Under many of the environmental statutes administered by the EPA, a violator’s ability to pay is one of the factors to be considered in determining the appropriateness of a civil penalty.⁵

² This 2015 guidance is intended to apply to administrative civil penalties assessed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as well as all other EPA civil penalty authorities. In addition, the [1997 Superfund Policy](#), which is directly applicable to ability-to-pay determinations in the context of Superfund cost recovery enforcement actions, may also provide a helpful framework for case teams to evaluate ability-to-pay claims concerning civil penalties, in both Superfund and non-Superfund cases.

³ Because the United States is covered by the Full Faith and Credit Clause of the United States Constitution, federal agencies are excluded from ATP considerations when calculating civil penalties.

⁴ If the EPA case team needs more support to conduct financial analysis, please refer to the list of financial analysts and OCE contracting officer representatives on the “Ability to Pay” document library located on EPA Region 5, Office of Regional Counsel’s SharePoint site.

⁵ See, e.g., Clean Water Act (CWA), § 309(g)(3), 33 U.S.C. § 1319(g)(3); CERCLA, § 109(a)(3), 42 U.S.C. § 9609(a)(3); Emergency Planning and Community Right-to-Know Act (EPCRA), § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C); Act to Prevent Pollution from Ships (APPS), § 9(b), 33 U.S.C. § 1908(b); and the Toxic Substances Control Act (TSCA), §§ 16(a)(2)(B), 207(c)(1)(C), 15 U.S.C. §§ 2615(a)(2)(B), 2647(c)(1)(C). Other statutes direct the EPA to “take into consideration” *inter alia* “the economic impact” or “effect” of the penalty on “the violator.” See, e.g., Clean Air Act (CAA), §§ 113(e)(1), 205(c)(2), 42 U.S.C. §§ 7413(e)(1), 7524(c)(2);

Since the Environmental Appeals Board's (EAB or Board) decision in *In re New Waterbury, Ltd.*, it has been a well-settled principle that the EPA needs only to prove that it has considered each of the statutory factors and that its proposed penalty is supported by EPA's analysis of those factors.⁶ As concluded by the EAB in *New Waterbury*, "this does not mean that there is any specific burden of proof with respect to any individual factor; rather the burden of proof goes to the Region's consideration of all of the factors."⁷

To meet this burden,⁸ the EPA must come forward with evidence to show that it considered the factors and that the penalty is appropriate. This does not require the EPA to establish that "the respondent can, in fact, pay a penalty, but whether a penalty is *appropriate*."⁹ In *New Waterbury*, the EAB rejected the respondent's claim that, at a penalty hearing, the EPA must, as part of its prima facie case, "introduce *specific* evidence to show that a respondent has the ability to pay a penalty."¹⁰ Rather, the EPA needs only to "produce some evidence regarding the respondent's *general* financial status from which it can be *inferred* that the respondent's ability to pay should not affect the penalty amount."¹¹

Typically, it is sufficient to obtain general financial information directly from the respondent or from publicly available records. For example, administrative law judges (ALJs) have held that the EPA has satisfied its burden of production upon submitting information such as a Dun & Bradstreet report, respondent's credit risk score, and/or documentation of multiple attempts to contact the respondent.¹² Where the EPA has limited information about the respondent's

CWA, §§ 309(d), 311(b)(8), 33 U.S.C. §§ 1319(d), 1321(b)(8); Certain Alaskan Cruise Ship Operations Act (CACSO), 33 U.S.C. § 1901 note (*see* § 1409(c)); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), § 14(a)(4), 7 U.S.C. § 136l(a)(4); and the Safe Drinking Water Act (SDWA), § 1423(c)(4)(B)(v), 42 U.S.C. § 300h-2(c)(4)(B)(v). Although the statutes differ somewhat in the terms that are used, the EPA has read these terms to be analogous to "ability to pay." *See, e.g.*, 45 Fed. Reg. 59770, 59771 (Sept. 10, 1980) (The EPA has "combined the concepts involved in these factors into one 'ability to pay' factor."); *see In re Commercial Cartage Co.*, [7 E.A.D. 784](#), 807 (EAB 1998) (concluding that "the 'ability to continue in business' factor from section 205(c)(2) of the Clean Air Act is analogous to the 'ability to pay' factor found in other statutory penalty provisions").

⁶ [5 E.A.D. 529](#), 538 (EAB 1994); *see also In re Spitzer Great Lakes, Ltd.*, [9 E.A.D. 302](#), 320 (EAB 2000); *In re JHNY, Inc.*, [12 E.A.D. 372](#), 398 (EAB 2005); and *In re United Global Trading, Inc.*, [No. FIFRA-04-2011-3020 EPA](#) at 20 (ALJ Feb. 28, 2014).

⁷ *In re New Waterbury* at 539.

⁸ *See id.* at 536, n.16 ("The term 'burden of proof' in this context encompasses two concepts: the burden of production, and the burden of persuasion. 4 Stein, *et al.*, *Administrative Law* 24-2 (1994). The first of these to come into play is the burden of production—that is, the 'duty of going forward with the introduction of evidence.' *Id.* at 24-9. This burden may shift during the course of litigation; if a complainant satisfies its burden of production, the burden then shifts to the respondent to produce, or go forward with the introduction of, rebuttal evidence. *Id.* The burden of persuasion comes into play only 'if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.' 2 *McCormick on Evidence* at 426 (Strong, ed. 1992). This burden refers to what a 'litigating proponent must establish in order to persuade the trier of facts of the validity of his claim.' *Administrative Law* at 24-5. Importantly, this burden does not shift between the parties during the course of litigation. *Id.* at 24-8.")

⁹ *Id.* at 539.

¹⁰ *Id.* at 541.

¹¹ *Id.*

¹² *See In re United Global Trading, Inc.* at 19-21 (whereby the ALJ held that the EPA satisfied the relatively low burden of proof when it provided a Dun & Bradstreet report, a locations sales report from American Business Directory, and an annual sales report from Demographics Now).

financial condition when the complaint is filed, “a respondent’s ability to pay may be *presumed* until it is put at issue by a respondent.”¹³

B. The Respondent Has the Burden of Proving Inability to Pay

If the respondent puts its ability to pay the penalty at issue, the respondent has the burden of proof to show that (1) the EPA failed to consider all of the statutory factors¹⁴ in determining the appropriateness of the penalty, or (2) “through the introduction of additional evidence that despite consideration of all the factors the recommended penalty calculation is not supported and thus is not ‘appropriate’.”¹⁵

For the respondent to prove its inability to pay the penalty, it must establish that paying the penalty would cause it to suffer an undue financial hardship and prevent it from paying its ordinary and necessary business expenses.¹⁶ If the respondent fails to proffer specific evidence or does offer evidence but cannot demonstrate its inability to pay, it has failed to meet its burden.¹⁷

It is not sufficient for the respondent to offer only tax returns with no explanation or supporting documentation of how it cannot pay the penalty. In *In re Bil-Dry Corp.*, the EAB found that the respondent failed to meet its burden of proof.¹⁸ The respondent submitted four years of federal tax returns and testimony from its president, but offered only “conclusory comments that a full penalty assessment would put Respondent out of business [and] failed to provide the type of detailed analysis required to establish Respondent’s inability to pay claim.”¹⁹ The Board found persuasive testimony from EPA’s financial expert, stating that the respondent could have submitted evidence “such as examples of austere measures being taken at the business because of hard times, loan extensions obtained, or statements of back taxes owed.”²⁰

¹³ *In re New Waterbury* at 541; *see also In re Spitzer Great Lakes* at 321.

¹⁴ Under Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, the ability of a violator to pay a proposed penalty is *not* a factor that the Agency must consider in assessing a civil penalty. However, because ability to pay is considered to be a mitigating factor in EPA’s [RCRA Civil Penalty Policy](#) (June 2003), enforcement personnel should be generally aware of the financial status of the respondent in the event that its ability to pay the proposed penalty is raised as an issue in settlement or at a hearing. As with any mitigating factor or circumstance, the burden to demonstrate inability to pay rests on the respondent. Therefore, in enforcement cases initiated, *e.g.*, under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), the respondent has the burden of persuasion on its alleged inability to pay. *See In re Bil-Dry Corp.*, [9 E.A.D. 575](#), 611-12 (EAB 2001). In such cases, however, a respondent’s inability to pay usually will be considered *only if* the issue is raised by the respondent. *Id.*

¹⁵ *In re Waterbury* at 539.

¹⁶ *In re Bil-Dry Corp.* at 614.

¹⁷ *See In re JHNY, Inc.* at 383 (“Even financially challenged entities need to toe the line of compliance, and only those entities demonstrating a genuine inability to pay should be removed from the compliance-inducing influence that civil penalty assessment affords.”)

¹⁸ *In re Bil-Dry Corp.* at 612-13.

¹⁹ *Id.*

²⁰ *Id.* at 613.

III. Evaluating an Ability to Pay Claim

Once the respondent has raised its ATP claim, the EPA will evaluate whether the respondent has funds that could be applied to a penalty payment while covering its ordinary and necessary business expenses. There are several steps to this process, including: (a) requesting federal tax returns and other pertinent financial information and documentation; (b) selecting the applicable financial computer model and interpreting the results; (c) handling, as appropriate, information claimed by the submitter to be confidential business information; (d) evaluating and resolving the ATP claim; and, in some instances, (e) litigating the claim.

A. Documents Needed for ATP Analysis

Obtaining the respondent's pertinent financial documents is the first step in evaluating its financial condition and ability to pay the proposed penalty. Additionally, EPA's financial computer models require certain numerical inputs from these documents. A for-profit respondent will need to proffer the three to five most recent consecutive years of its federal tax returns filed with the Internal Revenue Service (IRS),²¹ together with all schedules and attachments. Individuals and municipalities that do not file federal tax returns or have other relevant financial documents to submit to the EPA will need to fill out the applicable EPA financial data request form.²²

For-profit businesses generally file the following documents:

- Sole proprietorship or one-member LLCs/partnerships file IRS Form 1040 ("U.S. Individual Income Tax Return") and Schedule C;
- S-corporations file IRS Form 1120S ("U.S. Income Tax Return for an S Corporation") and Schedule K-1;
- C-corporations file IRS Form 1120 ("U.S. Corporation Income Tax Return");
- Multi-member LLCs file IRS Form 8832 ("Entity Classification Election") and can elect to be treated as either an S- or C-corporation; and
- Multi-member partnerships file IRS Form 1065 ("U.S. Return of Partnership Income") and Schedule K-1.

Governmental entities²³ do not file tax forms with the IRS, but generally have the following documents:

- Annual financial reports, bond prospectuses, and budgets, which typically are publicly available on the entity's website or from commercial providers.

²¹ The respondent should certify that all responses and information are complete and accurate. The EPA may consider requesting all audit assessments or adjustments along with accompanying notes from the IRS and the respondent's responses to the IRS subsequent to the initial filing for the case team's consideration.

²² EPA's financial data request forms for individuals and municipalities are available at: <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

²³ Governmental entities include special districts that are a form of local government created by a local community to meet a specific public need and may be supported by taxes and user fees. Examples include airports, cemeteries, community services, drainage/flood control/water conservation, fire protection, healthcare/hospitals, harbors/ports, irrigation, libraries, police protection, recreation and parks, resource conservation, sanitation/sewer, transit, utility, water, and waste management agencies.

Not-for-profit entities generally file the following documents:

- IRS Form 990 if gross receipts are more than \$200,000 or assets greater than \$500,000; and
- Annual financial reports.

The case team generally requests the tax returns and other relevant financial reports through correspondence or via initial pre-filing notices with the respondent. To the extent that the EPA requests financial documentation through informal conversations, it is important to memorialize such requests in writing to respondent so that the case team can introduce such written requests before the ALJ if the respondent fails to provide documents in support of its ATP claim.

B. Which EPA Financial Model to Use and When

The EPA has developed a series of financial computer models²⁴ – ABEL, INDIPAY, and MUNIPAY – designed to estimate a violator’s ability to pay. ABEL estimates a company’s future cash flow based on past performance, and should be used for S- or C-corporations or multi-member LLC/partnerships. INDIPAY estimates the amount an individual can afford to pay based on excess cash flow and debt capacity, and should be used for individuals, sole proprietorships or one-member LLC/partnerships. MUNIPAY estimates a non-federal governmental entity’s level of affordable expenditures based on its available funds, debt capacity, and demographic characteristics (*e.g.*, average annual income). Annual financial reports, bond prospectuses, budgets, or the EPA financial data request form for governmental entities are to be used with the MUNIPAY²⁵ model. The EPA does not have a corresponding model for not-for-profit entities.

The financial computer models are generally only used for settlement purposes, and the case team is not required to use the models. However, it is advised that EPA staff run the applicable model because it provides a quick estimate of ability to pay. The models also provide a baseline of financial documents to request from the respondent and can deter frivolous ATP claims. The case team also may find the models helpful as a starting point in discussing ability to pay and, oftentimes, use of the models can result in a quick settlement, especially when the penalty is too small to warrant the expense of retaining financial experts.

For cases involving large penalties, complex corporate structures, federally recognized tribal entities, and not-for-profit entities, the case team is advised to contact a financial analyst for assistance.

²⁴ These models are located at: <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

²⁵ Governmental entities can be evaluated with the basic MUNIPAY principles of looking at the non-restricted fund balances and assessing the entity’s capacity to assume additional debt. If there are concerns about the interpretation of financial data, the case team generally should consult with a financial analyst. Also, if MUNIPAY produces inconclusive results or if a governmental entity submits documentation of a unique financial condition, the case team generally should consult with a financial analyst and request that the governmental entity to provide additional information, if needed.

C. Conducting the ATP Analysis

1. Evaluating the Model Result

When the model concludes that the respondent can pay the penalty, the case team can be reasonably assured that, based on the available financial documentation, the penalty will not burden the respondent with an undue financial hardship. If the respondent continues to claim an undue financial hardship, it should provide further documentation of the circumstances upon which that assertion is based (*e.g.*, job loss, fire at facility, loss of major client, substantial outstanding debt with burdensome debt service payments, default on debt payments or financial covenant agreements, bankruptcy,²⁶ no assets,²⁷ significant unpaid tax liens and liabilities,²⁸ and/or other significant change in financial status). The case team may consult a financial analyst or expert to review the documentation provided and evaluate the validity of the respondent's assertions.

Conversely, the model could provide a result indicating a low, or zero,²⁹ probability that the respondent can pay the penalty. In many cases, the case team should be able to rely on this result and adjust the penalty accordingly. However, there may be certain scenarios that suggest further analysis beyond the model results may be needed. For example:

- ***Models Generate Flags Warranting Further Inquiry:*** The models may generate a flag or message when certain inconsistencies are identified from the inputs (*e.g.*, “the most recent year’s cash flow is significantly worse than its historic average, which could mean that ABEL’s future cash flow projections are overstated.”). A financial analyst can evaluate such model flags to determine whether additional information should be requested, and to more accurately assess the respondent’s ability to pay the penalty.
- ***Respondent’s Cash Flow Is Understated:*** The model does not capture potential sources of funds beyond the reported financial data. The respondent’s cash flow could be understated if it has been depleted through nonessential or excessive business expenses (*e.g.*, officer compensation, travel and entertainment expenses, charitable contributions, cash dividends paid to shareholders, and expensive cars and homes). In these scenarios, the respondent may have money to pay the penalty, and it must decide how to make this money available by reducing other costs. The respondent may liquidate certain nonessential assets, call in loans made to officers, acquire additional loans (if it has

²⁶ A bankruptcy filing will not involve an ATP analysis because any penalties assessed can only be collected pursuant to the Bankruptcy Code. Before bringing an enforcement action against a debtor in bankruptcy, the regional legal bankruptcy coordinator should be consulted. See [Guidance on EPA Participation in Bankruptcy Cases](#), Steven A. Herman (Sept. 30, 1997).

²⁷ If the respondent has no assets, it is not necessarily indicative of an inability to pay. For example, in the service industries where equipment is leased, the balance sheet may not reflect any assets.

²⁸ This can be verified through credit reports or Dunn & Bradstreet reports.

²⁹ Even where the economic model generates a zero ATP result, it is not inappropriate for the EPA to seek and accept a nominal penalty in settlement. For example the [Lead-Based Paint Consolidated ERPP](#) at p. 22, fn. 31 states that: “[e]ach financial analysis of a respondent’s ability to pay should assume an ability to pay at least a small penalty to acknowledge and reinforce the respondent’s obligations to comply with the regulatory requirements cited as violations in the civil administrative complaint.”

sufficient debt capacity), or borrow money from its parent company or subsidiaries. The case team may find it useful to obtain a financial analyst or investigator to help identify other sources of funds or conduct a trend analysis of historical expenses to identify excessive expenses made out of line with historical patterns, such as an accelerated rate of paying back long-term debt.

- ***Related Corporate Entities:*** In addition to reviewing the liable party's tax returns and related financial information, the case team should request information on the respondent's relationship with affiliated corporations, partnerships, and other business enterprises. Examples of such a relationship may include: related party transactions (including rent below market value), loan or security agreements, coinsurance, equity and debt participation, intermingling of property or funds, and/or officer and shareholder compensation. The case team may find that it is appropriate to look to the assets of the related business enterprise to pay a penalty when the liable party does not have the resources to pay the penalty on its own.³⁰ In the event that the case team's investigation reveals that the liable party has been intentionally undercapitalized, has engaged in profit sharing, or has acted at variance with its official corporate form, the case team should evaluate veil piercing and alter ego theories. Similarly, the case team should be alert to fact patterns that may give rise to a fraudulent conveyance claim under the Federal Debt Collection Procedures Act.³¹

Regardless of the model results, the case team may follow up with clarifying questions to the respondent after the initial data request. If the respondent does not provide sufficient financial information and support that it lacks the financial resources to pay the civil penalty, the case team should presume that the respondent is able to pay the proposed penalty in full.

- ***Evaluating Real Estate Assets:*** Real estate is a significant asset for many respondents, including companies and individuals, and has the potential to contribute to a penalty payment. In the case of companies, investigating real estate assets can help identify significant discrepancies between the real estate's reported book value on the balance sheet and the actual current market value. The case team may also determine the value of the mortgages or liens secured by the real estate. When the market value is much higher than the mortgage balance, there may be potential for opening an equity line or obtaining additional debt secured by the real estate to support a penalty payment.

In cases involving individuals and sole proprietors, the respondent may own real estate, including rental or other commercial property that generates income. The INDIPAY model considers whether the individual has the cash flow to pay for a loan that could be applied to the penalty payment. That is, the model calculates the maximum affordable annual debt carried by the respondent, including credit card and mortgage debt, as compared to the respondent's total income. For example, under the INDIPAY model, an

³⁰ See, e.g., *In re New Waterbury* at 547-50.

³¹ 28 U.S.C. §§ 3301-3308.

individual lacks ability to pay if it carries more than 36 percent³² of its average income in debt. Assuming the respondent has the capacity to assume additional debt to finance the payment of a penalty, the respondent can work with a lender to determine whether such a loan is feasible, considering the respondent's total assets.

- **Other Entities:** If the respondent is organized as a governmental entity, a federally recognized Indian tribe or related tribal entity, or a not-for profit entity, a traditional ATP analysis may not be appropriate.
 - **Governmental Entities:** Some governmental entities, particularly small municipalities or utility districts, may have unique financial conditions. If there are concerns about the interpretation of financial data, the case team should consult with a financial analyst. For cases against governmental entities that will involve extensive and costly injunctive relief (*e.g.*, cases involving significant violations of the Clean Water Act or Safe Drinking Water Act), it is recommended that the case team consult with a financial analyst.³³
 - **Federally Recognized Indian Tribal Entities and Related Entities:** Unique and complicated legal and financial issues arise in the context of federally recognized Indian tribes and related entities.³⁴ These include issues affected by federal law, such as treaties, tribal and state laws, judicial decisions, federal government assistance, Executive Orders, and Executive Branch policies and guidance.³⁵ Our experience has been that some tribes have neither the kinds of financial documentation necessary for EPA to evaluate an ATP claim nor adequate revenue sources, although they may own and operate both for-profit and not-for-profit businesses. The case team should, in all cases, seek the advice and expertise of a financial analyst and contact OECA and its Office of Regional Counsel (ORC) Indian law attorneys on all ATP issues involving tribes and related entities. These offices can coordinate with other EPA tribal experts in the Office of International and Tribal Affairs, the Office of General Counsel, and the regions, who can provide advice on the intricacies of federal Indian law and policy, such as tribal sovereign immunity, tribal corporate liability, and tribal consultation and coordination.³⁶

³² The 36-percent default value in the INDIPAY model for the maximum debt payments as a percent of income is based upon the criteria that commercial lenders commonly employ.

³³ Nothing in this guidance is meant to serve as an Agency interpretation of Clean Water Act § 309(e), 33 U.S.C. § 1319(e). For further guidance on calculating penalties in municipal cases, practitioners may refer to the National Municipal Litigation Consideration section of the [Interim Clean Water Act Settlement Penalty Policy](#) at 17-20 (Mar. 1, 1995).

³⁴ The Bureau of Indian Affairs within the U.S. Department of the Interior maintains and updates a list of federally recognized Indian tribes. Related tribal entities can include, but are not limited to, corporations that are related to or part of a tribe, and independent or semi-independent boards operated by a tribe or other entity.

³⁵ State laws are normally inapplicable within areas of "Indian country," as defined in 18 U.S.C. § 1151, absent special circumstances. Consult Indian law experts on the specific facts to determine whether federal, tribal, or state law is applicable in a given situation.

³⁶ See [Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy](#), Steven A. Herman (Jan. 17, 2001), and [Questions and Answers on the Tribal Enforcement Process](#), Walker B. Smith (Apr. 17, 2007), which address civil administrative and judicial actions involving tribes and implement the [EPA Policy for the](#)

- **Not-for-Profit Entities:** Not-for-profit or charitable entities can include a wide range of entities, including schools and universities, housing, medical care, and churches or other religious institutions. Not-for-profit entities may own real estate and operate facilities that could be involved in environmental violations. Income for non-profits may come from fees charged for services, grants, and donations. In the context of an ATP analysis, a not-for-profit entity will be asked to provide the last three years of IRS Form 990 filings, if such a filing was made, and also the last three years of financial statements, including statements of receipts and expenses, assets and liabilities, and any related fund accounting. The ATP evaluation will depend on the size, nature, and stability of the not-for-profit entity. For example, a college may have fairly steady revenue sources (tuition, donations) and also relatively consistent expenses, but an entity supported entirely by donations may be far less stable. The analyst generally may consider trends in the entity's performance, the size of the entity, whether fund balances are growing or declining, the reasonableness of expenditures and salaries for managers, and other line items that appear to be unusual or one-time in nature. The entity's ability to pay will depend, in part, on whether excess funds are being generated from the entity's activities, and whether there is an excess amount available in unrestricted funds, similar to the government evaluation.

Although the ATP models are useful financial analysis tools, the financial model used may not yield a conclusive result in some cases. Many factors must be weighed in determining whether to rely on the model result or to engage in further financial analysis. For example, a high-penalty case or a particularly complex corporate respondent may warrant expending the resources to retain a financial analyst. In contrast, the case team may rely on the model result and less extensive documentation in a case involving straightforward facts and/or a low penalty amount.

2. Gathering and Evaluating Financial Information Beyond Federal Tax Returns

In general, the ATP evaluation will be an iterative process. In determining whether to ask for more information and conduct further analysis, the case team may assess the significance of the uncertainty and the importance of missing information to the ultimate inability to pay evaluation and overall case. In many situations, the case team will request additional financial documentation to fully evaluate the respondent's claim. The documentation that the team requests will depend on the issues or concerns that have been identified. At this stage, the case team may decide to seek advice from a financial analyst as to which documents would be most helpful to further evaluate the ATP claim.

Below is a chart delineating some of the most typically requested information, including a short description of each category's usefulness to the ATP analysis.

Administration of Environmental Programs on Indian Reservations, William D. Ruckelshaus (Nov. 8, 1984); see also *EPA Policy on Consultation and Coordination with Indian Tribes*, Lisa P. Jackson (May 4, 2011).

Financial Information	Basis for Requesting Financial Information
<i>For Corporations and Multi-member LLCs/Partnerships</i>	
Financial Statements Prepared by Outside Accounting Firm	<ul style="list-style-type: none"> • Financial statements contain additional information beyond tax returns, including a statement of cash flow and detailed notes and the auditor's opinion regarding the status of the company. • Financial statements may be based on a compilation, review, or audit.
Budgets and Year-to-Date Results	<ul style="list-style-type: none"> • Budgets and year-to-date results provide up-to-date information on performance and cash flow.
Asset Ledger	<ul style="list-style-type: none"> • An asset ledger provides the dates assets were placed into service, costs, and depreciation to date.
Loan and Mortgage Agreements	<ul style="list-style-type: none"> • Loan and mortgage agreements provide information on financial ratio requirements, guarantors and collateral or other security.
Federal Tax Returns of Related Financial Entities	<ul style="list-style-type: none"> • Federal tax returns of related financial entities may determine whether a related entity's assets can fund the penalty payment when respondent claims inability to pay.
SEC Filing DEF 14A Proxy Statements	<ul style="list-style-type: none"> • SEC Filing DEF 14A Proxy Statements may include a list of owners of more than 5% of the company, management salaries, members of the board of directors, and board compensation.
<i>For Individuals, Sole Proprietorships, and One-member LLCs/Partnerships</i>	
Individual Data Request Form	<ul style="list-style-type: none"> • Individual data request forms provide information on income, expenses, assets, liabilities, legal proceedings, and spousal holdings. • This data should be verified through documentation and independent research.
Real Estate Property Tax Records	<ul style="list-style-type: none"> • Real estate property tax records provide information on valuation, location, and nature of property.
W-2 Wage and Tax Statements	<ul style="list-style-type: none"> • W-2 statements can be used to verify income and related deductions.
Bank, Mortgage and Credit Card Statements	<ul style="list-style-type: none"> • Bank, mortgage, and credit card statements can be used to verify cash availability, level of expenditure and indebtedness.

In addition to requesting financial data, the case team is encouraged to conduct online searches of publicly available information related to the respondent's financial status. For example, credit reports include information on a company's financial condition, credit level, and credibility. A Dun & Bradstreet report may indicate gross sales revenue and number of employees, as well as identify the credit history, the corporate officers, and corporate address. Secretary of State websites provide a history of the entity's corporate filings and annual reports, and include

information about officers and basic financial data. A publicly traded company will publish annual and quarterly reports on its website as well as on the U.S. Securities and Exchange Commission's EDGAR system. In addition, investor presentations and transcripts of quarterly calls with analysts may be available for public companies.

3. Confidentiality of Financial Information³⁷

The case team should be mindful of the sensitivity of a respondent's financial information as well as handling confidential business information (CBI). Publicly available information, including published annual reports, is not entitled to confidential treatment. However, if the respondent claims any information submitted as CBI, the case team should ask the respondent to identify CBI with specificity (rather than stamping each page as CBI).

The 40 C.F.R. Part 2, Subpart B, regulations set forth at 40 C.F.R. §§ 2.201 through 2.215 establish certain "basic rules" governing business confidentiality claims, the handling by the EPA of business information which is or may be entitled to confidential treatment, and determinations by the EPA of whether information is entitled to confidential treatment for reasons of business confidentiality.³⁸ The additional Subpart B regulations set forth at 40 C.F.R. §§ 2.301 through 2.311 provide "special rules" for treatment of certain categories of business information obtained under various statutory provisions.³⁹ The basic rules of §§ 2.201 through 2.215 govern, except to the extent that they are modified or supplanted by the special rules of §§ 2.301 through 2.311 or in the event of a conflict between the rules, in which case the special rule which is applicable to the particular information in question shall govern. For example, if a company voluntarily provides financial information claimed as "business confidential" to support the ATP claim or to show that it lacks financial resources to pay the penalty, the information submitted would be governed by the basic rules set forth in 40 C.F.R. §§ 2.201 through 2.215. In contrast, if a company submits financial information claimed as business confidential pursuant to an EPA request for information under a specific statute, then it may be likely that the special rules would apply to the submitted information.

The regulations in 40 C.F.R. Part 2, Subsection B also address specific requirements for overall handling of CBI. In accordance with 40 C.F.R. § 2.203, when requesting financial information, the EPA must give notice to a respondent that it may assert a business confidentiality claim, and that information covered by such a claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. EPA's notice must contain a statement that, if the respondent submits financial information without a confidentiality claim,

³⁷ The EPA is governed by the Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401-3422 (RFP). This statute protects the confidentiality of personal financial records by requiring that federal government agencies provide individuals with notice and an opportunity to object before a bank or other specified institution can disclose personal financial information to a federal government agency. The RFP creates a statutory right of privacy on behalf of a customer of a financial institution in the records of the institution pertaining to him or her. *See* 12 U.S.C. §§ 3403, 3410. Generally, the RFP prohibits financial institutions from providing any governmental authority access to, or copies of, information in the financial records of any customer unless the customer has authorized such disclosure, 12 U.S.C. § 3404, or unless certain legal requirements—such as, for example, compliance with an administrative subpoena, search warrant or judicial subpoena—have been met. *See* 12 U.S.C. § 3402.

³⁸ *See* 40 C.F.R. § 2.202(a).

³⁹ *See* 40 C.F.R. § 2.202(b).

the EPA is permitted by applicable law to release the information without further notice to the respondent. It is important to note⁴⁰ that, if the respondent claims information submitted to the EPA as CBI, then the EPA must treat the information as CBI, unless the EPA makes an adverse determination that such claim is not entitled to confidential treatment. Where the EPA determines that information is not CBI, such information may be released in response to a request pursuant to the Freedom of Information Act.

Additionally, in cases involving individuals or small closely held businesses, financial information that a respondent submits may include personal information, the disclosure of which could constitute an unwarranted invasion of personal privacy.⁴¹ In these instances, the EPA will carefully examine this information in order to protect against the public release of such information.⁴²

4. Considerations Regarding the Administrative Penalty

Based on the financial analysis, the case team will determine if the respondent can pay the full or reduced penalty amount, but it is generally left to the respondent to decide how it will raise the funds. The respondent's funding options may include: using available cash; selling assets; increasing debt by personal or commercial borrowing; increasing equity by selling stock; delaying distribution of profits; and/or delaying planned future investments. When the respondent demonstrates that there is no or limited ability to pay or to borrow money for payment, the case team will typically work with the respondent to determine how much it can pay, and consider whether an extended payment plan is appropriate.⁴³ The case team has an obligation to support its conclusion with full documentation.⁴⁴

In certain circumstances, a respondent claiming an inability to pay all of a civil penalty may propose to complete a supplemental environmental project (SEP) as part of the settlement. As with all SEPs, the case team will only consider SEPs in ATP settlements that conform to EPA's SEP Policy,⁴⁵ and acceptance of the proposed SEP is at EPA's discretion. In particular, note that the SEP Policy makes clear that an acceptable SEP must have a nexus to the underlying violations and that the violator must pay a minimum penalty in addition to implementing the SEP.

⁴⁰ If a CBI claim is received after the information itself is received, the EPA will make such efforts as are administratively practicable to associate the late claim with the previously submitted information in EPA files. However, the EPA cannot assure the effectiveness of such efforts, in light of the possibility of prior disclosure or widespread prior dissemination of information. *See* 40 C.F.R. § 2.203(c).

⁴¹ *See* 5 U.S.C. § 552(b)(6).

⁴² *See* 5 U.S.C. § 552(a).

⁴³ *See infra* section III, pp. 15-18 for guidance on when extended payment plans for administrative penalties are appropriate and how they should be structured.

⁴⁴ *See* GM-22 at 27 ("[T]o promote consistency, it is essential that each case file contain a complete description of how each penalty was developed."); *see also Documenting Penalty Calculations and Justifications in EPA Enforcement Actions*, James M. Strock (Aug. 9, 1990)(Strock Memo).

⁴⁵ The [2015 Update to the 1998 EPA SEP Policy](#) and any subsequent updates to the SEP Policy supersede "non-monetary alternatives" which are referenced in GM-22 at 23-24.

IV. Litigating an Ability-to-Pay Claim in Administrative Enforcement Actions

A. Pre-Filing Negotiations

Once the case team initiates discussions on the penalty amount with the respondent, the case team should make clear to the respondent that if the respondent believes it has an inability to pay the proposed penalty, it should explain why and also submit supporting documentation such as financial statements, balance sheets, and other pertinent financial information. The case team's request⁴⁶ for documentation should be stated in an email, informal correspondence, or a show cause letter. This approach allows the respondent to work with the case team early in the process to resolve any ATP issues. It also helps the case team to create a record early on so that the respondent cannot claim later that it was unaware of options to address its alleged inability to pay the penalty. During negotiations at settlement meetings, the case team should ask whether the respondent will submit supporting financial records. The request and response should be documented.

B. Prehearing Information Exchange

Pursuant to 40 C.F.R. § 22.19(a)(3), the respondent is obligated to "explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated." If a respondent fails to raise an ATP claim after being notified of its burden, the presiding officer could deem the respondent to have waived any ATP objection to the penalty.⁴⁷ If ability to pay is raised after commencement of administrative litigation, the case team should generally consult with a financial analyst and list an expert witness who can testify to the respondent's financial capability in EPA's initial prehearing exchange.

After the prehearing information exchange, both parties can move for additional discovery, and the Presiding Officer may order such discovery only if it "seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily"⁴⁸ It is imperative that the case team establish a record of its repeated requests⁴⁹ as well as the respondent's repeated failures to produce requested financial

⁴⁶ Where the enforcement case team believes it is highly probable that the company has an ability to pay (*i.e.*, if the respondent is a large Fortune 500 company or where it should be readily discernable that ability to pay the penalty should not reasonably present an issue of concern, especially when considering the size of the penalty), then the case team need not initiate an ATP discussion and unnecessarily open a path that may also be used for purposes of delay or for other strategic advantage, such as causing the EPA case team to spend additional time and unwarranted resources exploring a non-existent fact when resources can be better directed towards the pursuit of settlement.

⁴⁷ See *In re New Waterbury* at 542 ("In this connection, where a respondent does not raise its ability to pay as an issue in its answer, or fails to produce any evidence to support an inability to pay claim after being apprised of that obligation during the pre-hearing process, the Region may properly argue and the presiding officer may conclude that any objection to the penalty based upon ability to pay has been waived under the Agency's procedural rules [footnote in opinion omitted] and thus this factor does not warrant a reduction of the proposed penalty.") See also *In re JHNY* at 399, where respondent submitted financial information supporting its ATP claim only during settlement negotiations but failed to comply with the prehearing exchange requirements to provide documentary evidence demonstrating its inability to pay the proposed penalty. Here, the respondent "waived its ability to contest the Region's penalty proposal on this basis."

⁴⁸ See 40 C.F.R. § 22.19(e)(ii).

⁴⁹ See *In re Chase*, RCRA (9006) [Appeal No. 13-04, slip.op.](#) at 27 (EAB Aug. 1, 2014).

documentation to the EPA, for expert witness review and analysis prior to hearing. The case team may seek to exclude, as prejudicial, the presentation and introduction of any required financial information that the respondent has failed to provide at least 15 days prior to the hearing, without good cause for such failure.⁵⁰

It is equally important for the case team to establish any failure, by the respondent, to promptly supplement or correct financial information provided to the EPA in a prehearing information exchange, or in response to a request for information or a discovery order, upon learning that any of that information is incomplete, inaccurate, or outdated.⁵¹ If the case team can establish any such failure, it may then move for an order to compel production of that information⁵² and/or for an *in limine* order seeking to exclude the prior incomplete, inaccurate, or outdated information from presentation and introduction into evidence at the hearing. Even when financial documentation is provided, it should demonstrate how the penalty will cause the respondent to suffer an undue financial hardship.⁵³ Without proffering the necessary financial documentation as well as a showing of undue financial hardship, the respondent has not met its burden of proof and may be required to pay the penalty in full.

If the Presiding Officer issues an order to compel production and the respondent fails to comply with such order,⁵⁴ the case team should consider requesting that the Presiding Officer issue an order drawing an adverse inference to the respondent's ATP claim and/or precluding the respondent from presenting or introducing into evidence at hearing any documents or information pertaining to a claim of financial hardship or inability to pay.⁵⁵

V. Extended Payments of Civil Penalties

As a general rule, the EPA requires respondents to pay civil administrative penalties in full within 30 days of the effective date of the final administrative order⁵⁶ or settlement agreement.⁵⁷ Allowing a respondent more than 30 days to pay civil penalties has the potential to undermine the deterrence value of penalties and may confer a benefit to the respondent because of the time value of money resulting from a delayed or extended payment schedule. In addition, the use of extended payment schedules increases the resources needed by the federal government to track when payments are due and ensure that they are paid in a timely manner.⁵⁸ Finally, allowing

⁵⁰ See 40 C.F.R. § 22.22(a)(1).

⁵¹ See 40 C.F.R. § 22.19(f).

⁵² See *In re Chase* at 28.

⁵³ See *In re Bil-Dry Corp.* at 610-12.

⁵⁴ See *In re Chase* at 29-30.

⁵⁵ See 40 C.F.R. § 22.19(g).

⁵⁶ Pursuant to 40 C.F.R. § 22.31(c), "The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered." A final order is effective upon filing with the Clerk. See 40 C.F.R. §§ 22.31(b), 22.5(a).

⁵⁷ The DOJ has a similar policy. In the context of civil judicial cases, the case team should consult its DOJ counterparts on how to respond to defendants' requests for extended payment plans.

⁵⁸ Payments over time have long been recognized under Agency policy as "a real burden on the Agency and should only be considered on rare occasions." See GM-22 at 23, and applicable statute-specific penalty policies (e.g., [Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements](#), Granta Y. Nakayama (Jan. 16, 2009) at 28 ("[A]dministration of time-payments is a burden on the Agency, so that this option should be

extended payment schedules may increase the risk that the respondent will not pay the full penalty assessed (*e.g.*, the respondent may file for bankruptcy before the installment payments are fully paid). Accordingly, settlements should strive to require payment of the full penalty in a single payment within 30 days of the effective date of the enforcement settlement whenever practicable.

A limited exception to this practice may be acceptable if a respondent has demonstrated an inability to pay the entire penalty in a single payment within the 30-day period (*e.g.*, due to fluctuations in cash flow), and it is in the Agency's best interest to accept an extended payment plan.⁵⁹ But accepting penalty payments over time may not be in the Agency's best interest if it is only as a means to obtain a higher penalty. If a single, lesser penalty amount is appropriate based on the facts of the case, then no meaningful objective is served by taking on the additional and avoidable burdens associated with tracking payments over time. Here, the case team should balance the goal of obtaining a penalty sufficient to deter future violations against the possibility that the respondent will suffer new financial difficulties before it is able to pay off its penalty obligations. For purposes of this guidance, the term "extended payment" plan refers to one of two scenarios: (1) the respondent is required to pay the civil penalty in full as a single payment at a date that is beyond the 30-day effective date; or (2) the respondent is required to pay the penalty in installments.

A. Financial Documentation for Evaluating Requests for Extended Payments in Administrative Enforcement Actions

When evaluating a respondent's request for an extended payment plan in the context of an administrative enforcement action, the case team should require the respondent to submit documentation of its inability to pay the full civil penalty within 30 days. The level of documentation and degree of financial analysis needed will vary depending upon the length of the extended payment schedule sought and the amount of the civil penalty to be assessed. Consistent with longstanding EPA policy on the necessity of documenting the basis for the civil penalty, the case team should ensure that the case file contains documentation relied upon as support for agreeing to an extended payment schedule.⁶⁰

The following scenarios are intended to guide the case team in administrative actions on the level of documentation that a respondent should be required to produce and the financial analysis the Agency should undertake before accepting an extended payment of a civil penalty.

- ***For payments up to 6 months from the effective date:*** If the case team deems the circumstances appropriate to facilitate a quick settlement without the excessive

considered only if the Agency is convinced it is not possible for the violator to obtain the funds necessary to pay the full penalty through borrowing money or the sale of assets.")).

⁵⁹ A determination of whether a respondent has demonstrated an inability to pay the full amount of a penalty is required as a condition for considering installment payments. *See* GM-22 at 23 and applicable statute-specific penalty policies (*e.g.*, [Clean Air Act Stationary Source Penalty Policy](#) at 20, William G. Rosenberg and Edward E. Reich (Oct. 25, 1991); [Interim Clean Water Act Settlement Penalty Policy](#) at 21 (Mar. 1, 1995); [RCRA Civil Penalty Policy](#) at 39-40, John P. Suarez (June 23, 2003)).

⁶⁰ *See* GM-22 at 27 ("[T]o promote consistency, it is essential that each case file contain a complete description of how each penalty was developed."); *see also* Strock Memo.

commitment of Agency resources for financial analysis (*e.g.*, small penalty assessed against a small business), the Agency will require the respondent to submit a signed, certified statement⁶¹ of its current financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. The installment payment shall be sufficient in size and frequency to liquidate the debt in not more than six months, unless the EPA determines that a longer period is required.

- ***For payments of 6 to 12 months from the effective date:*** If the respondent's financial information has not already been submitted to the EPA, the case team should require the respondent to submit its most recent year's federal income tax return and/or financial statements. The respondent must submit a signed, certified statement of its current financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. The respondent should also submit any additional information that the EPA may require to be reviewed by the financial analyst. The installment payment shall be sufficient in size and frequency to liquidate the debt in not more than one year, unless the EPA determines that a longer period is required.
- ***For payments of more than 12 months from the effective date:***⁶² If the respondent's financial information has not already been submitted to the EPA, the case team should require the respondent to submit at least three years of income tax returns and financial statements. The respondent must submit a signed, certified statement of its current financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. The respondent should also submit any additional information that the EPA may require to be reviewed by the financial analyst. The installment payment shall be sufficient in size and frequency to liquidate the debt in not more than three years, unless the EPA determines that a longer period is required.⁶³

B. Interest Rates to Be Assessed for Payments Made After 30 Days of the Effective Date

Interest should be assessed on all delayed single-payments or installment payments. For administrative enforcement cases, the EPA has discretion to charge an interest rate amount that is

⁶¹ The statement should be signed by a responsible corporate officer who must certify, under penalty of law, that the information contained in such statement, and the accompanying documents, are true, accurate, and complete based upon personal knowledge or personal inquiry of the person or persons directly responsible for gathering the information, and that he/she is aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

⁶² The EPA prefers not to extend payment plans beyond three years. This preference for a general three-year limitation on length of installment payments is consistent with the EPA and the U.S. Treasury regulations governing the acceptance of installment payments. *Cf.* 40 C.F.R. § 13.18(a) and 31 C.F.R. § 901.8(b).

⁶³ *Cf.* 40 C.F.R. § 13.18(a).

necessary to protect the interest of the government.⁶⁴ It is recommended that the case team assess the IRS underpayment rate⁶⁵ or the prime rate set by the major banks, as these rates approximate the average interest rate at which the respondent is able to borrow money. Assessing the underpayment rate also reduces the likelihood that the respondent will opt to pay the penalty in installments rather than secure private financing of its penalty debt. Alternatively, if the case involves a small penalty and short payment plan (*i.e.*, presenting a greater likelihood that the penalty will be paid in full), the case team may assess a lower rate, such as the Treasury current value of funds rate.⁶⁶ In all cases, the team should consider the size of the penalty and length of the payment plan in determining the interest rate to be assessed, and should document the reasons for assessing the interest rate.

C. Provisions for Early and Late Payments

Even where the settlement allows the respondent to pay the civil penalty on an extended payment schedule, the settlement should provide incentives for the respondent to pay earlier than provided under the settlement. For example, the settlement should make clear that the respondent will be required to pay the interest only on the balance due and for the length of time beyond 30 days it takes the respondent to pay the civil penalty in full.

Any settlement requiring the payment of a civil penalty, whether within 30 days or under an extended schedule, should specifically state the consequences if the respondent fails to make a timely penalty payment, including interest to be charged, stipulated penalties that may be assessed and administrative costs to be incurred. In determining the interest and administrative costs to be assessed, the case team is advised to check the language of the underlying penalty authority. For example, where a respondent fails to pay administrative penalties assessed under section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), section 113(d)(5) requires the application of the IRS underpayment rate established pursuant to 26 U.S.C. § 6221(a)(2).⁶⁷

In addition, the case team should generally include stipulated penalties for late or non-payments and/or an acceleration clause whereby the full amount of the penalty is immediately due and

⁶⁴ 31 U.S.C. § 3717, and implementing EPA and U.S. Treasury regulations, also provide flexibility in assessing a higher interest rate when accepting installment payments in the collections context if the Agency determines that a higher interest is necessary to protect the interests of the United States. *Cf.* 40 C.F.R. § 13.11(a)(1) and 31 C.F.R. § 901.9(b)(2). In civil judicial cases, in contrast, interest is generally charged pursuant to 28 U.S.C. § 1961.

⁶⁵ 26 U.S.C. § 6621(a)(2) states that the underpayment rate established under this section shall be the sum of the federal short-term rate determined under subsection (b), plus 3 percentage points. The IRS determines this rate on a quarterly basis. Entering “underpayment rate” into the search engine on the [IRS website](#) should provide the latest press release with a link to the current Revenue Ruling specifying the underpayment rate.

⁶⁶ *Cf.* 40 C.F.R. § 13.11(a)(1) (which provides for assessing an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) on installment payments in the collection context); *cf.* 31 C.F.R. § 901.9(b)(3) (which provides for assessing the current value of funds to the Treasury when a debtor defaults on a repayment agreement and seeks to enter into a new agreement).

⁶⁷ Section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5), also provides that “[a]ny person who fails to pay [the civil penalty] on a timely basis . . . shall be required to pay . . . the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each such quarter during which such failure to pay persists. *Such nonpayment penalty shall be 10 percent of the aggregate amount of such person’s outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.*” [Emphasis added.]

owing upon a late or non-payment.⁶⁸ It may also be appropriate to include a surety bond (if applicable to certain industries),⁶⁹ letter of credit, or some other form of guarantee for payment of the penalty to protect the Agency's interest in collecting the full amount of the assessed penalty. Such provisions may be particularly appropriate where the case involves a large penalty, where the settlement agreement or consent decree contains lengthy payment schedules, and where the long-term financial viability of the respondent is uncertain.

VI. Conclusion

This guidance is intended to assist case teams in evaluating a respondent's ability to pay a civil penalty. The guidance does not prescribe the amount by which the EPA may reduce a civil penalty if the respondent supports its ATP claim. Rather, this document provides a roadmap of the financial information the EPA should seek from a respondent to conduct an ATP analysis and how to use EPA's financial models. In addition, the guidance describes considerations for when additional financial information and/or the input from a financial analyst may be appropriate.

This memorandum is not a final agency action, and is intended solely as guidance for use by EPA personnel in the settlement of enforcement actions. It is not intended to, nor can it be relied upon, to create any rights enforceable by any party in litigation with the EPA or the United States. Furthermore, the EPA reserves the discretion to act at variance with this guidance in appropriate circumstances, taking into account all relevant case-specific facts and circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

cc: Cynthia Giles, Assistant Administrator, OECA
Lawrence Starfield, Principal Deputy Assistant Administrator, OECA
Shari Wilson, Deputy Assistant Administrator, OECA
Carol Ann Siciliano, Cross-Cutting Issues Law Office, OGC
Kathie A. Stein, Judge, Environmental Appeals Board
Susan Biro, Chief of the Administrative Law Judges
Bruce S. Gelber, Deputy Assistant Attorney General, ENRD, DOJ
W. Benjamin Fisherow, Chief, Environmental Enforcement Section, ENRD, DOJ

⁶⁸ An example of such an acceleration clause would be as follows: In the event of respondent's failure to make any payment of a civil penalty when due, the EPA may, without notice or demand, declare the entire unpaid balance due and any accrued interest and stipulated penalties then unpaid immediately due and payable.

⁶⁹ See, e.g., *In re American Lifan Industry, Inc.*, [CAA No. 14-02C](#) (EAB Feb. 24, 2014)(requiring a surety bond to ensure that there will be money available for certain future penalty assessments in accordance with 40 C.F.R. § 1054.690).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103-2852

In the Matter of: :
: Docket No. TSCA-03-2023-0034
Mr. Robert Lauter d/b/a Prime Cut Paint :
1414 Baychester Ave. : COMPLAINT AND NOTICE OF
Norfolk, VA 23503 : OPPORTUNITY FOR A HEARING
Respondent :

Certificate and Proof of Service

Pursuant to 40 C.F.R. § 22.5(b)(1)(iii), I hereby certify that I filed today via EPA Region 3 Electronic Filing System copies of written verification of delivery by UPS commercial service of the Administrative Complaint and Notice of Opportunity for Hearing in the above captioned matter served on the following party:

Mr. Robert Lauter, Sole Proprietor
Prime Cut Paint
1414 Baychester Ave.
Norfolk, VA 23503

12/12/22

Date

PATRICK FOLEY

Digitally signed by PATRICK
FOLEY
Date: 2022.12.12 11:40:11 -05'00'

Patrick J. Foley, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
Four Penn Center
1600 John F. Kennedy Boulevard
215-814-2694



Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZA43F712494072869

Weight

10.00 LBS

Service

UPS Next Day Air®

Shipped / Billed On

12/07/2022

Additional Information

Signature Required

Delivered On

12/08/2022 11:27 A.M.

Delivered To

NORFOLK, VA, US

Received By

LAUTER

Left At

Residential

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 12/12/2022 10:30 A.M. EST

Response to Administrative Complaint

Now comes Robert Lauter pro se and moves that the deceptively worded, sprawling and inaccurate complaint filed on **12-7-22** be dismissed based on the following bill of particulars not represented in either the complaint itself, or the report filed by the so-called investigator on **11-16-2019**.

- 1.) On **July 20th 2019** I Robert Lauter entered a covenant with one Daniel Gillis residing at 114 South Broad Street Suffolk Va. 23434. Though the scope of work did include **“pressure wash”** and **“scrape loose coatings”** the agreement is worded as **“the work detail agreement in conjunction with the attached terms and conditions shall constitute the covenant”**, In these terms is a disclaimer which stated **“ The proposal was estimated and priced upon visual sight examination from the ground level using ordinary means”** furthermore **“Prime Cut Paint can not me held accountable for any hidden defects”** and also **“Abatement is not a function of prime cut paint.”** Clause 11 of the terms also states that if a delay takes place as a result of another trade being called in, presumably in this case, **abatement of excessive loose paint**, my contract allows me to bill for my time. Mr. Gillis was offered a copy of the prescribed pamphlet **“Protect Your Family from Lead In Your Home”** He demurred and claimed he used to be a drywall contractor and **“knew all about it”** I still insisted he signed off on it and he did. He signed the contract and the terms and paid me **1,837.50** in **cash** as the deposit on a **6,125.00** proposed work agreement for labor. Though I do accept cash as a deposit, not beyond that, I was suspicious so immediately deposited into my sun trust business bank account. The invoices for the paint alone came to **1,534.09** Plus an additional **18.55 , 27.96, and 7.52**. These were charged to my commercial accounts with two of my venders..

2.) Shortly after beginning work I began to notice areas of the house, particularly in high up portions in excess of **25 feet** from the ground that would bring me into conflict with the RRP rule. And refused to proceed. Mr. Gillis intimated that if I would allow him to use the ladder, he would **“take care of it”**. Since **he had already secured a work permit from the city** I agreed to those terms. However, it soon became obvious Mr. Gillis was unable to get it done quickly enough. My paint bills came due so I demanded payment on **August 16th** in an email at which time they became indignant. Accused me of **“bouncing around”** and **“not scraping”** I directed them to the disclaimer at this time which clearly states **“that abatement is not a function of prime cut paint”**. This banter went back and forth until on **August 20th** Mr. Gillis called and left a message intimating he wanted to terminate the contract which I immediately registered to his wife’s email account. She responded by asking me for a lead license she knew I already didn’t have. I once again confirmed that I had gone over this with her husband and to review the contract. She told me to pick my equipment up tomorrow at **8:30 AM**. I arrived at the house **August 21st** and began to load my equipment. As I was doing so a police car arrived and informed me that Gillis had called in a complaint accusing me of **“threatening”** them. I showed the officer my contractor’s license and also the contract. They gave me their card which I passed on to the so-called EPA investigator. I immediately drove **to Suffolk Circuit Court** and filed a claim for injunctive relief which is a term in my agreement and set a date for hearing. On **August 26^h** I received communications from both The **IRS** and the contractor for the **EPA**. They scheduled appointments. Once I showed the **IRS** investigator on **September 3rd** that I in fact had deposited the cash, they left me alone. Mr. Ruge however showed up on **September 5th**, and despite being given **27 different pieces of documentation regarding the incident, an affidavit affirmed under penalty of perjury as to what happened as well as a diagram of the abatable portions of the house that I did not touch**. Withheld his report until the very day, **November 15**, that Gillis settled with me out of court after a Circuit Court Judge signaled he would freeze the title otherwise. He relies on photographs, one in which a condom wrapper, a Marlboro Box and a 7-11 coffee cup, have been neatly organized into the shot with paint chips. It can be confirmed I am a **practicing catholic**, it can be confirmed, **I have asthma**, please reference ***Lauter V. Glaxosmithkline***

U.S District and 4th Circuit court of Appeals 2016, 2017 and I will affirm under penalty of perjury I do not waste money on overpriced 7-11 coffee. Most importantly, there is no legal foundation to the pictures as they were taken after I was ejected from the job and Mr. Gillis admitted in Emails that he was scraping and trying to pressure me into doing what they only became concerned about, once they realized they were not going to be able to swindle me out of the money they owed.

- 3.) I neither need, nor want to involve myself in abatement. I am a painter, I paint. If I come to a hidden area that puts me into conflict with RRP my contract is structured so that the client is responsible for it. This is done for my safety and for theirs. These allegations are fiction, they have no basis in fact and are done out of spite. The EPA contractor was given case details on the Gillis's resulting in judgments and out of court settlements, which speak for themselves. None of the other addresses mentioned in the complaint were abated either. If the EPA wants to require a lead license to merely paint houses built before 1978, I simply will stop painting them. But that is not what the rule says and it is almost impossible to enforce as long as homeowners and tenants can do whatever they want while contractors and landlords take all the heat. I will not be bullied or intimidated into accepting responsibility for something I did not do and am fully aware of my rights to press this matter in Federal Court if there is any more action or harassment regarding the above styled matter.

I hereby affirm under penalty of perjury that the testimonial aspects of the above styled are true and correct and here with certify that real and true copies of the above styled were sent via first class mail to U.S.EPA Region III Arch Street Philadelphia Pennsylvania 1903-209 and to Patrick Foley assistant regional counsel at Patrick. J@EPA. Gov

Robert Lauter DBA Prime Cut Paint

U.S EPA Docket

TSC-03-2023

Answer

Now comes Robert Lauter Pro Se in Compliance with the last order and offers the revised answer. The numbers indicate the paragraphs in the complaint

1. Contested. the proper court of Jurisdiction for the alleged code violations is U.S District Court for the 4th Circuit, eastern district of Virginia.
2. Contested The Burden of proof lies with the EPA to prove to the preponderance of the evidence to a Jury of my peers that I disrupted 20 square feet of surface area in order to violate RRP.
3. Contested: the burden of proof lies with the EPA that I “failed or refused” to obey RRP
4. Contested: The burden of proof lies with the EPA that I am “liable for a civil penalty”
5. Contested The proper court of Jurisdiction pursuant to U.S.C is U.S District Court not the EPA
6. Contested : This analysis of congress’s intent is conclusory and abbreviated
7. Affirmed
8. Contested: The RRP rule applies to all property built before 1978 not portions of homes renovated after 1978 as was the case at 114 Broad Street
9. Affirmed
10. Affirmed
11. Contested : recoating surfaces does not qualify as renovation under the RRP and in any event the burden lies with the EPA that I disrupted more than 20 square feet
12. Affirmed
13. Affirmed however it is not a requirement to be a EPA certified renovator just because the property was built before 1978
14. Contested the definition proffered is conclusory and immaterial to the factual allegations
15. Contested Nowhere in my terms of service is “paint removal” offered the disclaimer proves this
16. Affirmed
17. Contested My business is zoned separately from my place of residence
18. Contested At no time did I preform “renovations” And received no “compensation” until I pressed the matter in court. The deposit money tendered was used for materials they maintained possession of.
19. Affirmed
20. Contested Sole proprietors by definition are not firms
21. Contested the contracts entered into were not “Renovation properties” they were painted
22. Affirmed 1 day after Gillis attempted unsuccessfully to have me arrested for picking up my equipment and I initiated proceedings in Circuit Court he evidently called both you and the IRS

23. Contested The scope of work agreed to is contingent upon the terms of service which states I stop work if any "hidden defects" arise such as loose paint in excess of the allowable amount
24. Contested I have no personal knowledge of any child, some teenager and his girlfriend
25. Contested " Portions of the property mention were renovated as late as 2003 including a new roof for the porch that the owner foolishly painted with interior paint
26. Contested the Gillis's were referred to the terms of service regarding abatement and debris removal in the disclaimer
27. Contested : The "EPA Inspector" is a sub- contractor not employed by this administration
28. Contested" For reason stated above
29. Contested For reason stated above and I had quit the property weeks before he arrived
30. Contested for reason stated above and there is no foundation that the photos are the result of my activities
31. Contested: For reason stated above and any signs posted would have been taken long before his arrival
32. Contested: For reason stated above and any plastic would have been taken long before his arrival
33. Contested: For reason stated above and my activities at said address were brief, not a renovation and certainly not a repair
34. Contested" I voluntarily submitted to the sub-contractor after he could not produce any official credentials tying him to the administration, 27 individual exhibits, including a log and copies of my contracts for all pre-1978 houses, including the Gillis contract and the Xerox Copy of the EPA lead pamphlet he was linked when I performed my initial estimate, my current legal action against Gillis, court records of previous actions against Gillis, emails, a diagram of the areas, as well as a copy of the policeman's card, business bank statement, notice from the IRS and an affidavit self- affirmed under penalty of perjury. He did no investigation whatsoever and complained about having to scan all the paperwork I gave him
35. Contested He did not identify anything, I had everything prepared for him.
36. Contested" For above stated reason
37. Contested The scope of work agreements are immaterial, it is the attached terms of service that matter, nowhere in the terms do any of the scope of work agreements indicate "renovation"
38. Contested I intimated to the contractor all correspondences should be in writing
39. Contested The property was not renovated, it was re-painted as the scope of work agreement and terms of service indicate
40. Contested for above stated reason
41. Contested for above stated reason
42. Contested for above stated reason
43. Contested for above stated reason
44. Contested for above stated reason
45. Contested the legal analysis is conclusory and immaterial to the facts
46. Contested the statement is conclusory
47. Contested for the above stated reason and nowhere in my contract do I offer renovations
48. Contested I was not certified because I do not offer or perform renovations
49. Contested It is not failure to be certified, I choose not to be and am not required to be under federal or state law.

50. Contested the statement is conclusory
51. Contested I do not have to employ or become a renovator because I am not a renovator
52. Contested this is hearsay by counsel
53. Contested the legal analysis regard the unfounded allegations is conclusory and immaterial
54. Contested the statement is conclusory
55. Contested the rule does not require a painter to purchase the EPA's Pamphlet, it requires that the information be given to the client, there is nothing in the law that stipulates we must purchase the EPA's literature, I use Xerox copies downloaded online
56. Contested "the pamphlet " is not the point. The information the pamphlet contains is. Gillis Acknowledged he was given the online version in the initial estimate and shown a xeroxed copy which was attached to the contract he signed
57. Contested no renovations were performed at the Gillis Home, furthermore counsel's "belief" as to what did or did not occur is immaterial and inappropriate
58. Contested they were linked the online pamphlet with the estimate and once again offered a xerox copy at the signing which they refused and was stapled to their contract.
59. Contested the statement is conclusory
60. Contested I provided all records requested and keep meticulous records
61. Contested I did not fail to provide any of the required records
62. Contested I still have the exhibit index from Circuit Court that catalogues all the paper work I provided the contractor inappropriately referred to as "inspector"
63. Contested the statement is conclusory
64. Contested the code applies to renovators
65. Contested the code applies to renovators
66. Contested the contractor would have no way of knowing what signs were or weren't used as respondent had quit the premises weeks in advance
67. Contested for reason stated above
68. Contested the statement is conclusory
69. Contested counsel's legal analysis is conclusory and immaterial
70. Contested this statute applies to renovators
71. Contested , more hearsay testimony by counsel, I was not conducting any renovations on the property on September 5th, I had already initiated court actions against the property owner on August 21st
72. Contested counsel's legal analysis is conclusory and immaterial
73. Contested The EPA offered to settle with me for 2,000.00 what a joke
74. Contested counsel's legal analysis is conclusory and immaterial
75. Contested 117,250.00 for writing this nonsense? What a bigger joke
76. Contested the analysis is conclusory and immaterial
77. Contested If the EPA wants a dime from me they will have to sue me in U.S District Court in front of a Jury
78. Contested the Analysis is conclusory and immaterial
79. Contested. The proper venue for a legal proceeding is a court of law not some administrative court
80. Affirm This answer conforms with the rules

Certificate

I Robert Lauter do hereby certify that real and true copies of the above styled were mailed to Mary Angeles Headquarters Hearing Clerk U.S Environmental Protection Agency Office of Administrative Law Judges 1200 Pennsylvania Ave. NW Mail Code 1900R Washington DC 20420 and Patrick Foley assistant Regional Counsel at Patrick.J@EPA.Gov

Delegation of Authority

1200 TN 350 12-2A

05/11/1994

Administrative Update 02/04/2016

12-2A. Administrative Enforcement: Issuance of Complaints and Signing of Consent Agreements

1. **AUTHORITY.** To file administrative complaints against alleged violators of the Toxic Substances Control Act (TSCA) for the purpose of proposing civil penalties as provided in the TSCA; and to negotiate and sign consent agreements memorializing settlements between the Agency and respondents.
2. **TO WHOM DELEGATED.** Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance.
3. **LIMITATIONS.**
 - a. Regional Administrators must consult with the Assistant Administrator for Enforcement and Compliance Assurance or his/her designee before exercising any of the above authorities. In addition, the Regional Counsels or their designees will conduct all negotiations
 - b. The Assistant Administrator for Enforcement and Compliance Assurance may exercise these authorities in multi-Regional cases or cases of national significance. In addition, the Assistant Administrator for Enforcement and Compliance Assurance must consult in advance with the Assistant Administrator for Chemical Safety and Pollution Prevention or his/her designee and must notify any affected Regional Administrators or their designees when exercising any of the above authorities. In addition, the Assistant Administrator for Enforcement and Compliance Assurance or his/her designee will conduct all negotiations.
 - c. The Assistant Administrator for Enforcement and Compliance Assurance and the Assistant Administrator for Chemical Safety and Pollution Prevention may waive their respective consultation requirements by memorandum.

4. REDELEGATION AUTHORITY.

- a. This authority may be redelegated.
- b. An officer or employee who redelegates authority does not divest herself or himself of the power to exercise that authority, and an official who redelegates authority may revoke such redelegation at any time.

5. ADDITIONAL REFERENCES.

- a. Sections 15 and 16 of TSCA.

United States **Code** Annotated

Title **15**. Commerce and Trade

Chapter 53. Toxic Substances Control (Refs & Annos)

Subchapter IV. Lead Exposure Reduction (Refs & Annos)

15 U.S.C.A. § 2681

§ 2681. Definitions

Effective: May 5, 2017

[Currentness](#)

For the purposes of this subchapter:

(1) Abatement

The term “abatement” means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under this subchapter. Such term includes--

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) Accessible surface

The term “accessible surface” means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(3) Deteriorated paint

The term “deteriorated paint” means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

(4) Evaluation

The term “evaluation” means risk assessment, inspection, or risk assessment and inspection.

(5) Friction surface

The term “friction surface” means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(6) Impact surface

The term “impact surface” means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

(7) Inspection

The term “inspection” means (A) a surface-by-surface investigation to determine the presence of lead-based paint, as provided in [section 4822\(c\) of Title 42](#), and (B) the provision of a report explaining the results of the investigation.

(8) Interim controls

The term “interim controls” means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(9) Lead-based paint

The term “lead-based paint” means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development, as **defined** in [section 4822\(c\) of Title 42](#), or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

(10) Lead-based paint hazard

The term “lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Administrator under this subchapter.

(11) Lead-contaminated dust

The term “lead-contaminated dust” means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the Administrator under this subchapter to pose a threat of adverse health effects in pregnant women or young children.

(12) Lead-contaminated soil

The term “lead-contaminated soil” means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Administrator under this subchapter.

(13) Reduction

The term “reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

(14) Residential dwelling

The term “residential dwelling” means--

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(15) Residential real property

The term “residential real property” means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(16) Risk assessment

The term “risk assessment” means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including--

(A) information gathering regarding the age and history of the housing and occupancy by children under age 6;

(B) visual inspection;

(C) limited wipe sampling or other environmental sampling techniques;

(D) other activity as may be appropriate; and

(E) provision of a report explaining the results of the investigation.

(17) Target housing

The term “target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

CREDIT(S)

(Pub.L. 94-469, Title IV, § 401, as added Pub.L. 102-550, Title X, § 1021(a), Oct. 28, 1992, 106 Stat. 3912; amended Pub.L. 115-31, Div. K, Title II, § 237(c), May 5, 2017, 131 Stat. 789.)

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL NOTES

Revision Notes and Legislative Reports

1976 Acts. [Senate Report No. 94-698](#) and [House Conference Report No. 94-1679](#), see 1976 **U.S. Code** Cong. and Adm. News, p. 4491.

1992 Acts. [House Report No. 102-760](#), House Conference Report No. 102-1017, and Statement by President, see 1992 **U.S. Code** Cong. and Adm. News, p. 3281.

Amendments

2017 Amendments. Par. (17). [Pub.L. 115-31](#), § 237(c)(1), which directed insertion of “or any 0-bedroom dwelling” after “disabilities,” was executed by making the insertion after “disabilities” the first place appearing to reflect the probable intent of Congress.


Par. (17). [Pub.L. 115-31](#), § 237(c)(2), which directed substitution of “housing)” for “housing for the elderly or persons with disabilities) or any 0 bedroom dwelling”, was executed by making the substitution for “housing for the elderly or persons with disabilities) or any 0-bedroom dwelling” to reflect the probable intent of Congress.

Relevant Notes of Decisions (3)

[View all 3](#)


Notes of Decisions listed below contain your search terms.

Construction with other laws


Lead Disclosure Rule of the Toxic Substances Control Act (TSCA) applied to investigation of multi-unit rental property by the Environmental Protection Agency (EPA), prompted by former tenant's anonymous complaint to the EPA that exterior paint was chipping off the building and falling to the ground; TSCA specifically **defined** “Lead-based paint hazard” to include “lead contaminated paint that is deteriorated,” and “deteriorated paint” to include “any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.” Toxic Substances Control Act § 401, **15** U.S.C.A. [United States v. Zook](#), D.Colo.2021, 569 F.Supp.3d 1101, motion to amend denied 2022 WL 293227. [Environmental Law](#)  456

Dust-lead hazard standards

Environmental Protection Agency (EPA) was required to set dust-lead hazard standards pursuant to Toxic Substances Control Act and Residential Lead-Based Paint Hazard Reduction Act solely on basis of its assessment of health risks, and could not

rewrite statutory terms to take into account practical considerations, such as feasibility and efficacy, even though all levels of lead were harmful to human health. [A Community Voice v. U.S. Environmental Protection Agency](#), C.A.9 2021, 997 F.3d 983. [Environmental Law](#)  420

Target housing

Environmental Protection Agency (EPA) was not required to meet any particular level of suspicion before issuing administrative subpoena to owner of multi-unit rental property to investigate whether he complied with lead paint disclosure rule of Toxic Substances Control Act (TSCA) after former tenant complained anonymously to EPA of chipping exterior paint on building, even if tenant lived in efficiency unit not covered by the rule; Act **defined** “target housing” for purposes of rule as “any housing constructed prior to 1978,” property was constructed in 1891, and owner did not claim that entire building consisted of efficiency units. [United States v. Zook](#), D.Colo.2021, 569 F.Supp.3d 1101, motion to amend denied 2022 WL 293227. [Environmental Law](#)  456

15 U.S.C.A. § 2681, **15 USCA § 2681**

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

This content is from the eCFR and is authoritative but unofficial.

Title 40 - Protection of Environment

Chapter I - Environmental Protection Agency

Subchapter R - Toxic Substances Control Act

Part 745 - Lead-Based Paint Poisoning Prevention in Certain Residential Structures

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

Source: 61 FR 9085, Mar. 6, 1996, unless otherwise noted.

Subpart E Residential Property Renovation

- § 745.80** Purpose.
- § 745.81** Effective dates.
- § 745.82** Applicability.
- § 745.83** Definitions.
- § 745.84** Information distribution requirements.
- § 745.85** Work practice standards.
- § 745.86** Recordkeeping and reporting requirements.
- § 745.87** Enforcement and inspections.
- § 745.88** Recognized test kits.
- § 745.89** Firm certification.
- § 745.90** Renovator certification and dust sampling technician certification.
- § 745.91** Suspending, revoking, or modifying an individual's or firm's certification.
- § 745.92** Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

Subpart E - Residential Property Renovation

Source: 63 FR 29919, June 1, 1998, unless otherwise noted.

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

- (a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and
- (b) Individuals performing renovations regulated in accordance with § 745.82 are properly trained; renovators and firms performing these renovations are certified; and the work practices in § 745.85 are followed during these renovations.

[73 FR 21758, Apr. 22, 2008]

§ 745.81 Effective dates.

- (a) **Training, certification and accreditation requirements and work practice standards.** The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:
- (1) **Training programs.** Effective June 23, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning April 22, 2009.
 - (2) **Firms.**
 - (i) Firms may apply for certification under § 745.89 beginning October 22, 2009.
 - (ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).
 - (3) **Individuals.** On or after April 22, 2010, all renovations must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).
 - (4) **Work practices.**
 - (i) On or after April 22, 2010 and before July 6, 2010 all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86 (b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.
 - (ii) On or after July 6, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(1) and (b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in § 745.82(a).
 - (5) The suspension and revocation provisions in § 745.91 are effective April 22, 2010.

- (b) **Renovation-specific pamphlet.** Before December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home* or *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. After that date, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* must be used exclusively.
- (c) **Pre-Renovation Education Rule.** With the exception of the requirement to use the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

[73 FR 21758, Apr. 22, 2008, as amended at 75 FR 24818, May 6, 2010]

§ 745.82 Applicability.

- (a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:
 - (1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm²) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.
 - (2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit as defined in § 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.
 - (3) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.
- (b) The information distribution requirements in § 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in §§ 745.85, 745.89, and 745.90 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of §

745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with § 745.90(b)(2), the cleaning verification requirements of § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of § 745.86(b)(6) and (b)(7).

[73 FR 21758, Apr. 22, 2008, as amended at 75 FR 24818, May 6, 2010; 76 FR 47938, Aug. 5, 2011]

§ 745.83 Definitions.

For purposes of this part, the definitions in § 745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA vacuum means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Minor repair and maintenance activities are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Painted surface means a component surface covered in whole or in part with paint or other surface coatings.

Pamphlet means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Recognized test kit means a commercially available kit recognized by EPA under § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Renovator means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Vertical containment means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations but it may be used on any renovation.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

Work area means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

[63 FR 29919, June 1, 1998, as amended at 73 FR 21758, Apr. 22, 2008; 76 FR 47938, Aug. 5, 2011]

§ 745.84 Information distribution requirements.

- (a) **Renovations in dwelling units.** No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:
- (1) Provide the owner of the unit with the pamphlet, and comply with one of the following:
 - (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
 - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
 - (2) In addition to the requirements in paragraph (a)(1) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:
 - (i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.
 - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
- (b) **Renovations in common areas.** No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:
- (1) Provide the owner with the pamphlet, and comply with one of the following:

- (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
- (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) **Comply with one of the following.**

- (i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required by § 745.86(c) and (d), at no cost to the occupants, or
- (ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants.

(3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) **Renovations in child-occupied facilities.** No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(1)

(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

- (A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
- (B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

- (A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date

and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(3) The renovation firm must 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.

(d) **Written acknowledgment.** The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:

(1) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(3) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

[63 FR 29919, June 1, 1998. Redesignated and amended at 73 FR 21760, Apr. 22, 2008; 75 FR 24818, May 6, 2010]

§ 745.85 Work practice standards.

(a) **Standards for renovation activities.** Renovations must be performed by certified firms using certified renovators as directed in § 745.89. The responsibilities of certified firms are set forth in § 745.89(d) and the responsibilities of certified renovators are set forth in § 745.90(b).

(1) **Occupant protection.** Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must

be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

- (2) **Containing the work area.** Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) **Interior renovations.** The firm must:

- (A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.
- (B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.
- (C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.
- (D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls.
- (E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) **Exterior renovations.** The firm must:

- (A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.
- (B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.
- (C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system.

- (D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.
- (3) ***Prohibited and restricted practices.*** The work practices listed below are prohibited or restricted during a renovation as follows:
- (i) Open-flame burning or torching of painted surfaces is prohibited.
 - (ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system.
 - (iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.
- (4) ***Waste from renovations.***
- (i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.
 - (ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.
 - (iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.
- (5) ***Cleaning the work area.*** After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.
- (i) ***Interior and exterior renovations.*** The firm must:
 - (A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.
 - (B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.
 - (ii) ***Additional cleaning for interior renovations.*** The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

- (A) **Walls.** Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.
- (B) **Remaining surfaces.** Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.
- (C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(b) **Standards for post-renovation cleaning verification -**

(1) **Interiors.**

- (i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.
- (ii) After a successful visual inspection, a certified renovator must:
 - (A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.
 - (1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.
 - (2) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.
 - (3) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.
 - (4) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.
 - (B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

- (1) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.
 - (2) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.
 - (3) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.
- (iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.
- (2) **Exteriors.** A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.
- (c) **Optional dust clearance testing.** Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:
- (1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.
 - (2) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.
 - (3) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in § 745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard.
- (d) **Activities conducted after post-renovation cleaning verification.** Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

[73 FR 21761, Apr. 22, 2008, as amended at 76 FR 47938, Aug. 5, 2011]

§ 745.86 Recordkeeping and reporting requirements.

- (a) Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.
- (b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

- (1) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described in § 745.82(a). These records or reports include:
 - (i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program).
 - (ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.
 - (iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.
- (2) Signed and dated acknowledgments of receipt as described in § 745.84(a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A).
- (3) Certifications of attempted delivery as described in § 745.84(a)(2)(i) and (c)(1)(ii)(A).
- (4) Certificates of mailing as described in § 745.84(a)(1)(ii), (a)(2)(ii), (b)(1)(ii), (c)(1)(i)(B), and (c)(1)(ii)(B).
- (5) Records of notification activities performed regarding common area renovations, as described in § 745.84(b)(3) and (b)(4), and renovations in child-occupied facilities, as described in § 745.84(c)(2).
- (6) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:
 - (i) Training was provided to workers (topics must be identified for each worker).
 - (ii) Warning signs were posted at the entrances to the work area.
 - (iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.
 - (v) The work area was contained by:
 - (A) Removing or covering all objects in the work area (interiors).
 - (B) Closing and covering all HVAC ducts in the work area (interiors).
 - (C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors).
 - (D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors).

- (E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.
- (F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors).
- (G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

- (vi) Waste was contained on-site and while being transported off-site.
- (vii) The work area was properly cleaned after the renovation by:
 - (A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.
 - (B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).
- (viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(c)

- (1) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:
 - (i) The owner of the building; and, if different,
 - (ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.
- (2) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.
- (3) The information required to be provided by paragraph (c) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by § 745.86(b)(1)(ii) and the training and work practice compliance information required by § 745.86(b)(6).

- (d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:
 - (1) The owner of the building; and, if different,
 - (2) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.
 - (3) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

[73 FR 21761, Apr. 22, 2008, as amended at 75 FR 24819, May 6, 2010; 76 FR 47939, Aug. 5, 2011]

§ 745.87 Enforcement and inspections.

- (a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).
- (b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).
- (c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).
- (d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.
- (e) Lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

[63 FR 29919, June 1, 1998, as amended at 73 FR 21763, Apr. 22, 2008]

§ 745.88 Recognized test kits.

- (a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.
- (b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.
 - (1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply:
<http://www.epa.gov/etv/howtoapply.html>.

- (2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.
- (3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.
- (4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.
- (5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.
- (6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) **Response criteria -**

- (1) **Negative response criteria.** For paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.
- (2) **Positive response criteria.** For paint containing lead below the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time.

[73 FR 21763, Apr. 22, 2008]

§ 745.89 Firm certification.

(a) **Initial certification.**

- (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.
- (2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:
 - (i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

- (ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.
- (iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) **Re-certification.** To maintain its certification, a firm must be re-certified by EPA every 5 years.

(1) **Timely and complete application.** To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

- (i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.
- (ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.
- (iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) **EPA action on an application.** After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

- (i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.
- (ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

- (iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) **Amendment of certification.** A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

- (1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.
- (2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.
- (3) Amending a certification does not affect the certification expiration date.

(d) **Firm responsibilities.** Firms performing renovations must ensure that:

- (1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.
- (2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.
- (3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.
- (4) The pre-renovation education requirements of § 745.84 have been performed.
- (5) The recordkeeping requirements of § 745.86 are met.

[73 FR 21764, Apr. 22, 2008]

§ 745.90 Renovator certification and dust sampling technician certification.

(a) **Renovator certification and dust sampling technician certification.**

- (1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust clearance sampling under § 745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

- (2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011 may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.
- (3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course October 4, 2011 may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.
- (4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year certification. Individuals who take a renovator refresher course that does not include hands-on training will be certified for 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will be certified for 5 years. Individuals who take the renovator refresher without hands-on training must, for their next refresher course, take a refresher course that includes hands-on training to maintain renovator certification.

(b) **Renovator responsibilities.** Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:

- (1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct workers who perform all of the tasks described in § 745.85(a).
- (2) Must provide training to workers on the work practices required by § 745.85(a) that they will be using in performing their assigned tasks.
- (3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(5) is performed.
- (4) Must regularly direct work being performed by other individuals to ensure that the work practices required by § 745.85(a) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.
- (5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.
- (6) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(8) Must prepare the records required by § 745.86(b)(1)(ii) and (6).

(c) **Dust sampling technician responsibilities.** When performing optional dust clearance sampling under § 745.85(c), a certified dust sampling technician:

(1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with § 745.227(e)(8).

(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

[73 FR 21765, Apr. 22, 2008, as amended at 75 FR 24819, May 6, 2010; 76 FR 47939, Aug. 5, 2011; 80 FR 20446, Apr. 16, 2015; 81 FR 7995, Feb. 17, 2016]

§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.

(a)

(1) **Grounds for suspending, revoking, or modifying an individual's certification.** EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with § 745.85. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) **Grounds for suspending, revoking, or modifying a firm's certification.** EPA may suspend, revoke, or modify a firm's certification if the firm:

(i) Submits false or misleading information to EPA in its application for certification or re-certification.

(ii) Fails to maintain or falsifies records required in § 745.86.

(iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) **Process for suspending, revoking, or modifying certification.**

(1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:

(i) The legal and factual basis for the proposed suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

- (iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.
 - (iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.
- (2) If an individual or firm requests a hearing, EPA will:
 - (i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.
 - (ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.
- (3) The Presiding Officer will:
 - (i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
 - (ii) Consider all relevant evidence, explanation, comment, and argument submitted.
 - (iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.
- (4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:
 - (i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.
 - (ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.
- (5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.
- (6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified, or reinstated.
- (7) Unless the decision and order issued under paragraph (b)(3)(iii) of this section specify otherwise:
 - (i) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) in order to make his or her certification current.
 - (ii) An individual whose certification has been revoked must take an initial renovator or dust sampling technician course in order to become certified again.

- (iii) A firm whose certification has been revoked must reapply for certification after the revocation ends in order to become certified again. If the firm's certification has been suspended and the suspension ends less than 5 years after the firm was initially certified or re-certified, the firm does not need to do anything to re-activate its certification.

[73 FR 21765, Apr. 22, 2008]

§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

- (a) **Persons who must pay fees.** Fees in accordance with paragraph (b) of this section must be paid by:

(1) **Training programs -**

- (i) **Non-exempt training programs.** All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: Renovator, dust sampling technician.
- (ii) **Exemption.** No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or non-profit organization. This exemption does not apply to the certification of firms or individuals.

- (2) **Firms.** All firms applying to EPA for certification and re-certification to conduct renovations.

(b) **Fee amounts -**

- (1) **Certification and accreditation fees.** Initial and renewal certification and accreditation fees are specified in the following table:

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Renovator or Dust Sampling Technician Course	\$560	\$340
Refresher Renovator or Dust Sampling Technician Course	\$400	\$310
Renovation Firm	Certification	Re-certification (every 5 years see 40 CFR 745.89(b))
Firm	\$300	\$300
Combined Renovation and Lead-based Paint Activities Firm Application	\$550	\$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	\$20	\$20
Tribal Firm	\$20	\$20

- (2) **Lost certificate.** A \$15 fee will be charged for the replacement of a firm certificate.

(c) **Certificate replacement.** Firms seeking certificate replacement must:

- (1) Complete the applicable portions of the "Application for Firms" in accordance with the instructions provided.

- (2) Submit the application and a payment of \$15 in accordance with the instructions provided with the application package.
- (3) **Accreditation or certification amendments.** No fee will be charged for accreditation or certification amendments.

(d) **Failure to remit fees.**

- (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any firm or training program that does not remit fees described in paragraph (b) of this section in accordance with the procedures specified in 40 CFR 745.89.
- (2) EPA will not replace a certificate for any firm that does not remit the \$15 fee in accordance with the procedures specified in paragraph (c) of this section.

[74 FR 11869, Mar. 20, 2009, as amended at 76 FR 47939, Aug. 5, 2011]

Environmental Protection Agency

Pt. 22

conforms to the requirements of this section. Any such approval shall be after sufficient notice has been provided to the Regional Director of SBA.

(c) If the Regional Administrator disapproves the application, he shall notify the State, in writing, of any deficiency in its application. A State may resubmit an amended application at any later time.

(d) Upon approval of a State submission, EPA will suspend all review of applications and issuance of statements for small businesses in that State, pending transferral. *Provided, however,* That in the event of a State conflict of interest as identified in §21.12(a)(4) of this section, EPA shall review the application and issue the statement.

(e) Any applications shall, if received by an EPA Regional Office, be forwarded promptly to the appropriate State for action pursuant to section 7(g)(2) of the Small Business Act and these regulations.

(f)(1) EPA will generally not review or approve individual statements issued by a State. However, SBA, upon receipt and review of a State approved statement may request the Regional Administrator of EPA to review the statement. The Regional Administrator, upon such request can further approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been pro-

vided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

22.1 Scope of this part.

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

22.5 Filing, service by the parties, and form of all filed documents; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 *Ex parte* discussion of proceeding.

22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision, Motion To Reopen a Hearing, and Motion To Set Aside a Default Order

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing or to set aside a default order.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

- 22.50 Scope of this subpart.
- 22.51 Presiding Officer.
- 22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 1361; 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide,

Environmental Protection Agency

§ 22.3

and Rodenticide Act as amended (7 U.S.C. 1367(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d)), and a determination of nonconforming engines, vehicles or equipment under sections 207(c) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7541(c) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), and 300j-6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c);

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(11) The assessment of any administrative civil penalty under section 1908(b) of the Act To Prevent Pollution From Ships (“APPS”), as amended (33 U.S.C. 1908(b)).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000; 79 FR 65900, Nov. 6, 2014; 81 FR 73970, Oct. 25, 2016]

§ 22.2 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

§ 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

Act means the particular statute authorizing the proceeding at issue.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.201(h).

§ 22.3

40 CFR Ch. I (7–1–19 Edition)

Clerk of the Board means an individual duly authorized to serve as Clerk of the Environmental Appeals Board.

Commenter means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

Complainant means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

Consolidated Rules of Practice means the regulations in this part.

Environmental Appeals Board means the Board within the Agency described in 40 CFR 1.25.

Final order means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

Hearing means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

Hearing Clerk means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Initial decision means the decision issued by the Presiding Officer pursu-

ant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

Party means any person that participates in a proceeding as complainant, respondent, or intervenor.

Permit action means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Proceeding means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

Regional Administrator means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Environmental Protection Agency

§ 22.4

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.4(b).

Respondent means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000; 79 FR 65901, Nov. 6, 2014]

§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice, and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudica-

tion of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

(b) *Regional Judicial Officer.* Each Regional Administrator shall delegate to one or more Regional Judicial Officers authority to act as Presiding Officer in proceedings under subpart I of this part, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I of this part does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to § 22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any case in which he serves as a Regional Judicial Officer. A Regional Judicial Officer shall not knowingly preside over a case involving any party concerning whom the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the commencement of the case. A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and re-assignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a

party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.5 Filing, service by the parties, and form of all filed documents; business confidentiality claims.

(a) *Filing of documents.* (1) The original and one copy of each document intended to be part of the record shall be

Environmental Protection Agency

§ 22.5

filed with the Headquarters or Regional Hearing Clerk, as appropriate, when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. When a document is required to be filed with the Environmental Appeals Board, the document shall be sent to the Clerk of the Board by U.S. Mail, delivered by hand or courier (including delivery by U.S. Express Mail or by a commercial delivery service), or transmitted by the Environmental Appeal Board's electronic filing system, according to the procedures specified in 40 CFR 124.19 (i)(2)(i), (ii), and (iii). The Presiding Officer or the Environmental Appeals Board may by order authorize or require filing by facsimile or an electronic filing system, subject to any appropriate conditions and limitations.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of documents.* Unless the proceeding is before the Environmental Appeals Board, a copy of each document filed in the proceeding shall be served on the Presiding Officer and on each party. In a proceeding before the Environmental Appeals Board, a copy of each document filed in the proceeding shall be served on each party.

(1) *Service of complaint.* (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(ii)(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association

which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an agency of the United States complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) *Service of filed documents other than the complaint, rulings, orders, and decisions.* All documents filed by a party other than the complaint, rulings, orders, and decisions shall be served by the filing party on all other parties. Service may be made personally, by U.S. mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), by any reliable commercial delivery service, or by facsimile or other electronic means, including but not necessarily limited to email, if service by such electronic means is consented to in writing. A party who consents to service by facsimile or email must file an acknowledgement of its consent (identifying the type of electronic means agreed to and the electronic address to be used) with the appropriate Clerk. In addition, the Presiding Officer or the Environmental Appeals Board may by order

authorize or require service by facsimile, email, or other electronic means, subject to any appropriate conditions and limitations.

(c) *Form of documents.* (1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, mailing address, telephone number, and email address of an individual authorized to receive service relating to the proceeding on behalf of the person. Parties shall promptly file any changes in this information with the Headquarters or Regional Hearing Clerk or the Clerk of the Board, as appropriate, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (b)(2) of this section and § 22.6.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any document which does not comply with this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of business information.* (1) A person who wishes to assert

a business confidentiality claim with regard to any information contained in any document to be filed in a proceeding under these Consolidated Rules of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to the public for inspection and copying.

(2) Two versions of any document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Asserted". The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

[64 FR 40176, July 23, 1999, as amended at 69 FR 77639, Dec. 28, 2004; 79 FR 65901, Nov. 6, 2014; 82 FR 2234, Jan. 9, 2017]

Environmental Protection Agency

§ 22.8

§ 22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Headquarters or Regional Hearing Clerk, as appropriate, in any manner allowed for the service of such documents. All rulings, orders, decisions, and other documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. The Clerk of the Board, the Headquarters Hearing Clerk, or the Regional Hearing Clerk, as appropriate, must serve copies of such rulings, orders, decisions and other documents on all parties. Service may be made by U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), EPA's internal mail, any reliable commercial delivery service, or electronic means (including but not necessarily limited to facsimile and email).

[82 FR 2234, Jan. 9, 2017]

§ 22.7 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document; upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Completion of service.* Service of the complaint is complete when the re-

turn receipt is signed. Service of all other documents is complete upon mailing, when placed in the custody of a reliable commercial delivery service, or for facsimile or other electronic means, including but not necessarily limited to email, upon transmission. Where a document is served by U.S. mail, EPA internal mail, or commercial delivery service, including overnight or same-day delivery, 3 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document. The time allowed for the serving of a responsive document is not expanded by 3 days when the served document is served by personal delivery, facsimile, or other electronic means, including but not necessarily limited to email.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.8 *Ex parte* discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

§ 22.9 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention and non-party briefs.

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or

the Environmental Appeals Board for good cause.

(b) *Non-party briefs.* Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

§ 22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Proceedings subject to subpart I of this part may be consolidated only upon the approval of all parties. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) *Severance.* The Presiding Officer or the Environmental Appeals Board may, for good cause, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Commencement of a proceeding.

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).

§ 22.14 Complaint.

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for each violation alleged;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for a Permit Action and a statement of its proposed terms and conditions; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or Permit Action;

(6) Notice if subpart I of this part applies to the proceeding;

(7) The address of the Regional Hearing Clerk; and

(8) Instructions for paying penalties, if applicable.

(b) *Rules of practice.* A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

§ 22.15 Answer to the complaint.

(a) *General.* Where respondent contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or Permit Action, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing,

§ 22.16

40 CFR Ch. I (7–1–19 Edition)

the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 22.16 Motions.

(a) *General.* Motions shall be served as provided by § 22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

(1) Be in writing;

(2) State the grounds therefor, with particularity;

(3) Set forth the relief sought; and

(4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, an Administrative Law Judge) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§ 22.29(c) and 22.51, an Administrative Law Judge shall rule on all

motions filed or made after an answer is filed and before an initial decision becomes final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.17 Default.

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause

Environmental Protection Agency

§ 22.18

shown, the Presiding Officer may set aside a default order.

(d) *Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.* Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) *Quick resolution.* (1) A respondent may resolve the proceeding at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action. In a proceeding subject to the public comment provisions of § 22.45, this quick resolution is not available until 10 days after the close of the comment period.

(2) Any respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within 30 days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within 60 days after receiving the complaint, the respondent shall pay the full amount of the proposed

penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement and a proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Conclusion of proceeding.* No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement.

(c) *Scope of resolution or settlement.* Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative means of dispute resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

§ 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) *Prehearing information exchange.*

(1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) Each party's prehearing information exchange shall contain:

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and (ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

Environmental Protection Agency

§ 22.19

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference to consider:

- (1) Settlement of the case;
- (2) Simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to pleadings;
- (4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
- (5) The limitation of the number of expert or other witnesses;
- (6) The time and place for the hearing; and
- (7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer shall ensure that the record of the proceeding includes any stipulations, agreements, rulings or orders made during the conference.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot reasonably be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act. The Presiding Officer may issue a subpoena for discovery purposes only in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.5(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in this paragraph (e) shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under any applicable law to conduct inspections, issue information request

letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) *Failure to exchange information.* Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under § 22.17(c).

§ 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less

than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedures

§ 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) *Assignment of Presiding Officer.* When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact. The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing not later than 30 days prior to the date set for the hearing. The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not

irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in paragraphs (c) and (d) of this section or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testi-

mony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the party who has called the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the information excluded. The offer of

§ 22.24

proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the information from evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of

40 CFR Ch. I (7–1–19 Edition)

the availability of the transcript, whichever is sooner.

§ 22.26 Proposed findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision, Motion To Reopen a Hearing, and Motion To Set Aside a Default Order

§ 22.27 Initial Decision.

(a) *Filing and contents.* After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty

criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become a final order 45 days after its service upon the parties and without further proceedings unless:

(1) A party moves to reopen the hearing;

(2) A party appeals the initial decision to the Environmental Appeals Board;

(3) A party moves to set aside a default order that constitutes an initial decision; or

(4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

(d) *Exhaustion of administrative remedies.* Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to paragraph (c) of this section, respondent waives its rights to judicial review. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

§ 22.28 Motion to reopen a hearing or to set aside a default order.

(a) *Motion to reopen a hearing—(1) Filing and content.* A motion to reopen a hearing to take further evidence must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: State briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to

the Presiding Officer and filed with the Headquarters or Regional Hearing Clerk, as appropriate. A copy of the motion shall be filed with the Clerk of the Board in the manner prescribed by § 22.5(a)(1).

(2) *Disposition of motion to reopen a hearing.* Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Headquarters or Regional Hearing Clerk, as appropriate, and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The timely filing of a motion to reopen a hearing shall automatically toll the running of the time periods for an initial decision becoming final under § 22.27(c), for appeal under § 22.30, and for the Environmental Appeals Board to elect to review the initial decision on its own initiative pursuant to § 22.30(b). These time periods begin again in full when the Presiding Officer serves an order denying the motion to reopen the hearing or an amended decision. The Presiding Officer may summarily deny subsequent motions to reopen a hearing filed by the same party if the Presiding Officer determines that the motion was filed to delay the finality of the decision.

(b) *Motion to set aside default order—*

(1) *Filing and content.* A motion to set aside a default order must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. The motion shall be made to the Presiding Officer and filed with the Headquarters or Regional Hearing Clerk, as appropriate. A copy of the motion shall be filed with the Clerk of the Board in the manner prescribed by § 22.5(a)(1).

(2) *Effect of motion to set aside default.* The timely filing of a motion to set aside a default order automatically tolls the running of the time periods for an initial decision becoming final under § 22.27(c), for appeal under § 22.30(a), and for the Environmental Appeals Board to elect to review the initial decision on its own initiative pursuant to § 22.30(b). These time periods begin again in full when the Presiding Officer serves an order denying

the motion to set aside or an amended decision. The Presiding Officer may summarily deny subsequent motions to set aside a default order filed by the same party if the Presiding Officer determines that the motion was filed to delay the finality of the decision.

[82 FR 2235, Jan. 9, 2017]

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:

(1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and

(2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.

(c) *Interlocutory review.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the

public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal and appeal brief—*(1) *Filing an appeal—*(i) *Filing deadline and who may appeal.* Within 30 days after the initial decision is served, any party may file an appeal from any adverse order or ruling of the Presiding Officer.

(ii) *Filing requirements.* Appellant must file a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board as set forth in § 22.5(a). One copy of any document filed with the Clerk of the Board shall also be served on the Headquarters or Regional Hearing Clerk, as appropriate. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants.

(iii) *Content.* The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with appropriate page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with specific citation or other appropriate reference to the record (*e.g.*, by including the document name and page number)), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If any appellant includes attachments to its notice of appeal or appellate brief, the notice of appeal or appellate brief shall contain a table that provides the title of each appended document and assigns a label identifying where it may be found in the record.

(iv) *Multiple appeals.* If a timely notice of appeal is filed by a party, any other party may file a notice of appeal and accompanying appellate brief on any issue within 20 days after the date on which the first notice of appeal was

served or within the time to appeal in paragraph (a)(1)(i) of this section, whichever period ends later.

(2) *Response brief.* Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or non-party participant may file with the Environmental Appeals Board an original and one copy of a response brief responding to arguments raised by the appellant, together with specific citation or other appropriate reference to the record, initial decision, and opposing brief (*e.g.*, by including the document name and page number). Appellee shall simultaneously serve one copy of the response brief upon each party, non-party participant, and the Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. If any responding party or non-party participant includes attachments to its response brief, the response brief shall contain a table that provides the title of each appended document and assigns a label identifying where it may be found in the record. Further briefs may be filed only with leave of the Environmental Appeals Board.

(3) *Length*—(i) *Briefs.* Unless otherwise ordered by the Environmental Appeals Board, appellate and response briefs may not exceed 14,000 words, and all other briefs may not exceed 7000 words. Filers may rely on the word-processing system used to determine the word count. As an alternative to this word limitation, filers may comply with a 30-page limit for appellate and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, and any attachments do not count toward the word or page-length limitation. The Environmental Appeals Board may exclude any appeal, response, or other brief that does not meet word or page-length limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board to file a longer brief. Such re-

quests are discouraged and will be granted only in unusual circumstances.

(ii) *Motions.* Unless otherwise ordered by the Environmental Appeals Board, motions and any responses or replies may not exceed 7000 words. Filers may rely on the word-processing system used to determine the word count. As an alternative to this word limitation, filers may comply with a 15-page limit. Headings, footnotes, and quotations count toward the word or page-length limitation. The Environmental Appeals Board may exclude any motion that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board. Such requests are discouraged and will be granted only in unusual circumstances.

(b) *Review initiated by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall issue an order notifying the parties and the Presiding Officer of its intent to review that decision. The Clerk of the Board shall serve the order upon the Regional Hearing Clerk, the Presiding Officer, and the parties within 45 days after the initial decision was served upon the parties. In that order or in a later order, the Environmental Appeals Board shall identify any issues to be briefed by the parties and establish a time schedule for filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties written notice of such determination to allow preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion in response to a request or on its own initiative, order oral argument on any or

all issues in a proceeding. To request oral argument, a party must include in its substantive brief a statement explaining why oral argument is necessary. The Environmental Appeals Board may, by order, establish additional procedures governing any oral argument before the Environmental Appeals Board.

(e) *Motions on appeal*—(1) *General*. All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided. In advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.

(2) *Disposition of a motion for a procedural order*. The Environmental Appeals Board may act on a motion for a procedural order at any time without awaiting a response.

(3) *Timing on motions for extension of time*. Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Environmental Appeals Board with a reasonable opportunity to issue an order.

(f) *Decision*. The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may

remand the case to the Presiding Officer for further action.

[64 FR 40176, July 23, 1999, as amended at 68 FR 2204, Jan. 16, 2003; 69 FR 77639, Dec. 28, 2004; 79 FR 65901, Nov. 6, 2014; 80 FR 13252, Mar. 13, 2015; 82 FR 2235, Jan. 9, 2017]

Subpart G—Final Order

§ 22.31 Final order.

(a) *Effect of final order*. A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date*. A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) *Payment of a civil penalty*. The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) *Other relief*. Any final order requiring compliance or corrective action, or a Permit Action, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

Environmental Protection Agency

§ 22.35

(e) *Final orders to Federal agencies on appeal.* (1) A final order of the Environmental Appeals Board issued pursuant to § 22.30 to a department, agency, or instrumentality of the United States shall become effective 30 days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within 30 days of service of the final order. If a timely request is made, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the 30-day period described in paragraph (e)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order issued pursuant to § 22.30 shall be filed within 10 days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.4(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

Subpart H—Supplemental Rules

§ 22.33 [Reserved]

§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under sec-

tions 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)), and a determination of nonconforming engines, vehicles or equipment under sections 207(c) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7541(c) and 7547(d)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Issuance of notice.* Prior to the issuance of a final order assessing a civil penalty or a final determination of nonconforming engines, vehicles or equipment, the person to whom the order or determination is to be issued shall be given written notice of the proposed issuance of the order or determination. Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies these notice requirements.

[81 FR 73971, Oct. 25, 2016]

§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

§ 22.36

40 CFR Ch. I (7–1–19 Edition)

§ 22.36 [Reserved]

§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) (“SWDA”). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Corrective action and compliance orders.* A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15.

§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act (“CWA”) (33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Consultation with States.* For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the

CWA, 33 U.S.C. 1369(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the “EPA, Hazardous Substances Superfund,” in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

§ 22.40 [Reserved]

§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) *Scope.* This section shall apply, in conjunction with §§22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2647). Where inconsistencies exist between this section and §§22.1 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives this right unless it requests in its answer a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the documents in the record as necessary, and notify the parties of the changes.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b). Where inconsistencies exist between this section and §§22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

- (1) The docket number of the order;
- (2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;
- (3) The location of the facility where violations were found;
- (4) A description of the violations;
- (5) The penalty that was assessed;

and

(6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

(a) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of

the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

[65 FR 30904, May 15, 2000]

§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice*—(1) *General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the pro-

posed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick resolution and settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under § 22.18, or commenced under § 22.13(b), until 10 days after the close of the comment period provided in paragraph (c)(1) of this section.

(4) *Petition to set aside a consent agreement and proposed final order.* (i) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of any consent agreement between the parties and the proposed final order.

(ii) Within 30 days of receipt of the consent agreement and proposed final order a commenter may petition the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), to set aside the consent agreement and proposed final order on the basis that material evidence was not considered. Copies of the petition shall be served on the parties, but shall not be sent to the Regional Hearing Clerk or the Presiding Officer.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the consent agreement and proposed final order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or Environmental Appeals Board shall assign a Petition Officer to consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise

involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the proposed final order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the proceeding by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. The Petition Officer shall:

(A) File the order with the Regional Hearing Clerk;

(B) Serve copies of the order on the parties and the commenter; and

(C) Provide public notice of the order.

(viii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Regional Administrator may issue the proposed final order, which shall become final 30 days after both the order denying the petition and a properly signed consent agreement are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District

Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the final order is denied, the final order shall become effective 30 days after such denial has been filed with the Regional Hearing Clerk.

§§ 22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

§ 22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to all adjudicatory proceedings for:

(1) The assessment of a penalty under sections 309(g)(2)(A) and 311(b)(6)(B)(i) of the Clean Water Act (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300h-2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§22.11, 22.16(c), 22.21(a), and 22.29. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

§ 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

§ 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to §22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under §22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

PART 23—JUDICIAL REVIEW UNDER EPA-ADMINISTERED STATUTES

Sec.

- 23.1 Definitions.
- 23.2 Timing of Administrator's action under Clean Water Act.
- 23.3 Timing of Administrator's action under Clean Air Act.
- 23.4 Timing of Administrator's action under Resource Conservation and Recovery Act.
- 23.5 Timing of Administrator's action under Toxic Substances Control Act.
- 23.6 Timing of Administrator's action under Federal Insecticide, Fungicide and Rodenticide Act.
- 23.7 Timing of Administrator's action under Safe Drinking Water Act.
- 23.8 Timing of Administrator's action under Uranium Mill Tailings Radiation Control Act of 1978.
- 23.9 Timing of Administrator's action under the Atomic Energy Act.
- 23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.
- 23.11 Holidays.
- 23.12 Filing notice of judicial review.

AUTHORITY: Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j-7(a)(2), 300j-9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 28 U.S.C. 2112(a), 2343, 2344.

SOURCE: 50 FR 7270, Feb. 21, 1985, unless otherwise noted.