Exhibit H

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

Exhibit H

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Section 1: Introduction, Overview and Background

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 forth 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*.

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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 complaint[7] 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]

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[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).

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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-occurrence[14] 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.

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).

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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.

Section 3: Assessing Civil Administrative Penalties

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]

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[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.

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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 penalty[22] 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.

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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

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renovation project[25] 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.

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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.

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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:

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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/abatements.

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;

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- 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 adjustments[28] 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.

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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.

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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.

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- 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).

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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 egregious[32] 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 estimated[34] 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 business[35] for very small firms and the self-employed.

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[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.

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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-disclosures 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.

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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.

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[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.

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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 documentation[41] 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]

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[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.

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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.

Exhibit H

APPENDICES

Exhibit H

Appendix A Violations and Circumstance Levels

CIRCUMSTANCE LEVEL

[48]Circumstance Level	Rule Violation
Section I Information Distribution Requirements	
Level 1b	1-Renovation in Dwelling Unit: 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	2-Renovation in Dwelling Unit: 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	3-Renovation in Common Area: 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	4-Renovation in Common Area: 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	5-Renovation in Child-Occupied Facility: 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	6-Renovation in Child-Occupied Facility: 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	7-Renovation in Child-Occupied Facility: 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	8-All Renovations: 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	1-All Renovations: 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	2-All Renovations: 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.

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	1-All Renovations: 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	2-Target Housing and Child-occupied Facilities: 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	1-All Renovations: 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	2-Target Housing and Child-occupied Facilities: 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	1-Renovation in Dwelling Unit: Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(1)
Level 4b	2-Renovation in Dwelling Unit: Failure to obtain, from the adult occupant, a written acknowledgment that the adult occupant has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(2)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(2)
Level 4b	3-Renovation in Common Area: Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, or that information signs have been posted, pursuant to 40 C.F.R. § 745.84(b)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(b)(1)
Level 4b	4-Renovation in Common Area: Failure to prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet, pursuant to 40 C.F.R. §745.84(b)(3)
Level 5b	5-Renovation in Common Area: Failure to notify, in writing, the owners and occupants if the scope, locations or expected starting and ending dates of the planned renovation activities change after the initial notification, before the renovator initiates work beyond that which was described in the original notice, pursuant to 40 C.F.R. § 745.84(b)(4)
Level 4b	6-Renovation in Child-Occupied Facility: Failure to obtain, from the owner of the building, a written acknowledgment that the owner has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. §745.84(c)(1)(*i*)
Level 4b	7-Renovation in Child-Occupied Facility: Failure to obtain from an adult representative of the child-occupied facility, if the operator of the child-occupied facility is not the owner of the building, a written acknowledgment that the operator has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(c)(1)(*ii*)
Level 4b	8-Renovation in Child-Occupied Facility: Failure to prepare, sign and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet pursuant to 40 C.F.R. §745.84(c)(3)
Level 5b	9-All Renovations: Failure to include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of the renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature, pursuant to 40 C.F.R. § 745.84(d)(1)
Level 5b	10-All Renovations: Failure to provide the written acknowledgment of receipt on either a separate sheet or as part of any written contract or service agreement for the renovation, and be written in the same language as the text of the contract or agreement or lease or pamphlet, pursuant to 40 C.F.R. § 745.84(d)(2) and (3)

Appendix A Violations and Circumstance Levels

[48]Circumstance Level	Rule Violation
Section VI Record Retention Requirements	
Level 6a	1-All Renovations: Failure to retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities pursuant to 40 C.F.R. § 745.86
Level 6a	2-All Renovations: 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	3-Target Housing and Child-occupied Facilities: 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]	1-All Renovations: Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.89(a) pursuant to 40 CFR § 745.81(a)(2)(ii)
Level 5a	2-All Renovations: Failure of an EPA-certified firm to stop renovations or dust sampling if it does not obtain recertification under 40 CFR § 745.89(a), pursuant to 40 C.F.R. §745.89(b)(1)(iii)
Level 5a	3-All Renovations: Failure of an EPA-certified firm to amend its certification within 90 days of the date a change occurs to information included in the firm's most recent applications, pursuant to 40 C.F.R. §745.89(b). 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	4-All Renovations: 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	5-All Renovations: 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	6-All Renovations: Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to 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	7-All Renovations: Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to maintain copies of their course completion certificate(s) (proof of certification) at the work site pursuant to 40 CFR § 745.90(b)(7)
Level 1a	8-All Renovations: 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	9-All Renovations: 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	10-Target Housing and Child-occupied Facilities: 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	11-Target Housing and Child-occupied Facilities: 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	1-Target Housing and Child-occupied Facilities: Failure of a training program that performs, offers or claims to provide EPA-accredited lead-based paint activities courses, or renovator or dust sampling courses to apply for accreditation to EPA under 40 CFR §745.225(b) and receive accreditation from EPA under 40 CFR § 225(b)(2) pursuant to 40 CFR § 745.225(a)(3)

[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.

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[48]Circumstance Level	Rule Violation
Level 3a	2-Target Housing and Child-occupied Facilities: Failure by a training program to employ a training manager who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225 (c)(1)
Level 3a	3-Target Housing and Child-occupied Facilities: 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	4-Target Housing and Child-occupied Facilities: Failure of a training program's principal instructor and/or training manager to perform the assigned responsibilities, pursuant to 40 C.F.R. §745.225(c)(3)
Level 6a	5-Target Housing and Child-occupied Facilities: 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	6-Target Housing and Child-occupied Facilities: Failure of a training program to ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities, including the provision of training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed, pursuant to 40 C.F.R. §745.225(c)(5)
Level 3a	7-Target Housing and Child-occupied Facilities: Failure of a training program to provide the training courses that meet the training hour requirements to ensure accreditation in the relevant disciplines, pursuant to 40 C.F.R. §745.225(c)(6)
Level 4a	8-Target Housing and Child-occupied Facilities: Failure of a training program to conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline to evaluate successful completion of the course, pursuant to 40 C.F.R. §745.225(c)(7)
Level 6a	9-Target Housing and Child-occupied Facilities: Failure of a training program to issue unique course completion certificates containing the required information to each individual who passes the training course, pursuant to 40 C.F.R. §745.225(c)(8)
Level 5a	10-Target Housing and Child-occupied Facilities: Failure of a training program to develop and implement a quality control plan that contains at least the minimum elements, pursuant to 40 C.F.R. §745.225(c)(9)
Level 3a	Target Housing and Child-occupied Facilities: 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	11-Target Housing and Child-occupied Facilities: 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	12-Target Housing and Child-occupied Facilities: 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	13-Target Housing and Child-occupied Facilities: 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	14-Target Housing and Child-occupied Facilities: Failure of a training manager to provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses, pursuant to 40 C.F.R. §745.225(c)(14)
Level 3a	15-Target Housing and Child-occupied Facilities: Failure by a training program to meet the minimum training curriculum requirements for each of the disciplines, pursuant to 40 C.F.R. §745.225(d)

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[48]Circumstance Level	Rule Violation
Section IX Work Practice Standards for Conducting Renovations in Target Housing and Child-Occupied Facilities	
Level 2a	1-Interior Renovations: 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	2-Interior Renovations: 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	3-Interior Renovations: 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	4-Interior Renovations: 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	5-Interior Renovations: 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	6-Exterior Renovations: 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	7-Exterior Renovations: 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	8-Exterior Renovations: 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	9-Exterior Renovations: 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	10-Prohibited and restricted practices: 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	11-Prohibited and restricted practices: Failure to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planning, 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	12-Prohibited and restricted practices: 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	Waste from renovations: 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)

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[48]Circumstance Level	Rule Violation
Level 2a	13-Waste from renovations: 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	14-Waste from renovations: 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	15-Cleaning the work area: 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	16-Cleaning the work area: 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	17-Cleaning the work area: 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	18-Cleaning the work area: 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	19-Cleaning the work area: 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	20-Cleaning the work area: 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	21-Cleaning the work area: 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	22-Cleaning the work area: 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	23-Cleaning the work area: 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	24-Standards for post-renovation cleaning verification: 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	25-Standards for post-renovation cleaning verification: 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	26-Standards for post-renovation cleaning verification: 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	27-Standards for post-renovation cleaning verification: 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)

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[48]Circumstance Level	Rule Violation
Level 1a	28-Standards for post-renovation cleaning verification: 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	29-Standards for post-renovation cleaning verification: 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	30-Standards for post-renovation cleaning verification: 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	31-Standards for post-renovation cleaning verification: 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	32-Standards for post-renovation cleaning verification: 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	1-Target Housing and Child-occupied Facilities: 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	2- Target Housing and Child-occupied Facilities: 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	3-Target Housing and Child-occupied Facilities: 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	4-Target Housing and Child-occupied Facilities: 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	5-Target Housing and Child-occupied Facilities: 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	6-Target Housing and Child-occupied Facilities: 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	7-Target Housing and Child-occupied Facilities: 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	8- Target Housing and Child-occupied Facilities: 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	9- Target Housing and Child-occupied Facilities: Failure of an inspector or risk assessor to prepare an inspection report that includes the required information, pursuant to 40 C.F.R. §745.227(b)(4)
Level 2a	10-Target Housing and Child-occupied Facilities: 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	11- Target Housing and Child-occupied Facilities: 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)

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[48]Circumstance Level	Rule Violation
Level 3a	12-Target Housing and Child-occupied Facilities: 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	13-Target Housing and Child-occupied Facilities: 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	14- Target Housing and Child-occupied Facilities: 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	15-Target Housing and Child-occupied Facilities: 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	16-Target Housing and Child-occupied Facilities: Failure of a risk assessor to prepare a lead hazard screen report that includes the required information, pursuant to 40 C.F.R. §745.227(c)(5)
Level 3a	17-Target Housing and Child-occupied Facilities: 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	8-Target Housing and Child-occupied Facilities: 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	19-Target Housing and Child-occupied Facilities: 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	20-Target Housing and Child-occupied Facilities: 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	21-Residential Dwellings: 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 **c**ontact with dust, pursuant to 40 C.F.R. §745.227(d)(5)
Level 3a	22-Multi-family Dwellings and Child-occupied Facilities: 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	23-Child-occupied Facilities: 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	24-Target Housing and Child-occupied Facilities: 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	25-Target Housing and Child-occupied Facilities: 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	26-Target Housing and Child-occupied Facilities: 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	27-Target Housing and Child-occupied Facilities: Failure of risk assessor to prepare a risk assessment report that includes the required information, pursuant to 40 C.F.R. §745.227(d)(11)
Level 1a	28-Target Housing and Child-occupied Facilities: 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)

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[48]Circumstance Level	Rule Violation
Level 3a	29- Target Housing and Child-occupied Facilities: 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	30- Target Housing and Child-occupied Facilities: 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	31-Target Housing and Child-occupied Facilities: 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	32-Target Housing and Child-occupied Facilities: 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	33-Target Housing and Child-occupied Facilities: 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	34-Target Housing and Child-occupied Facilities: 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	35-Target Housing and Child-occupied Facilities: 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	36-Target Housing and Child-occupied Facilities: 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	37-Target Housing and Child-occupied Facilities: 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	38-Target Housing and Child-occupied Facilities: 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	39-Target Housing and Child-occupied Facilities: 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	40-Target Housing and Child-occupied Facilities: 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	41-Target Housing and Child-occupied Facilities: Failure to conduct soil abatement, when necessary, according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(7)
Level 3a	42-Target Housing and Child-occupied Facilities: 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	43-Target Housing and Child-occupied Facilities: 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	44-Target Housing and Child-occupied Facilities: 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	45-Target Housing and Child-occupied Facilities: 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)

Appendix A Violations and Circumstance Levels

[48]Circumstance Level	Rule Violation
Level 4a	46-Target Housing and Child-occupied Facilities: 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	47-Target Housing and Child-occupied Facilities: 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	48-Target Housing and Child-occupied Facilities: 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	49-Target Housing and Child-occupied Facilities: 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	50-Target Housing and Child-occupied Facilities: 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	51-Target Housing and Child-occupied Facilities: 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	52-Target Housing and Child-occupied Facilities: 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	53-Target Housing and Child-occupied Facilities: Failure to use the standard clearance levels for lead in dust of 40 µg/ft2 for floors, 250 µg/ft2 for interior window sills, and 400 µg/ft2 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	54-Target Housing and Child-occupied Facilities: 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	55-Target Housing and Child-occupied Facilities: Failure by a supervisor or project designer to prepare an abatement report that includes the required information, pursuant to 40 C.F.R. §745.227(e)(10)
Level 3a	56-Target Housing and Child-occupied Facilities: 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	57-Target Housing and Child-occupied Facilities: Failure to limit composite dust sampling to only those situations specified, pursuant to 40 C.F.R. §745.227(g)
Level 3a	58-Target Housing and Child-occupied Facilities: Failure to make a determination on the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(h)
Level 1a	59-Target Housing and Child-occupied Facilities: 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)

Exhibit H

Appendix B Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR PRE, RRP, & LBP ACTIVITIES RULES[49]

		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 (*e.g.*, as summer vacation) and there is no continuity of enrollment (*i.e.,* 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 (*e.g.*, as summer vacation) and there is no continuity of enrollment (*i.e.,* 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).

Exhibit H

Appendix B Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR TRAINING VIOLATIONS

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Potential that the trainer's violations will affect human health by impairing the student's ability to learn:		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

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Potential that the trainer's violations will affect human health by impairing the students ability to learn:		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).

Exhibit H

Appendix C Internet References for Policy Documents

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/fnlsup-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/

Appendix D List of Supplemental Environmental Projects (SEPs)

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.)*