



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

March 19, 2018

DEPUTY ADMINISTRATOR

Karen Tanenbaum
Attorney, Retaliation and Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W. Suite 201
Washington, D.C. 20036

RE: OSC File No. DI-16-3546

Dear Ms. Tanenbaum:

Regarding your request for additional information, I am providing the following points to be included in your review of the Agency's Report (submitted on December 6, 2017) and Supplemental Information (submitted on February 16, 2018).

EPA has issued guidance on the enforcement response and penalty policy ("ERP") for the Lead RRP Rule and a supporting inspection manual that addresses the need for information on the presence of pregnant women or children. Both the ERP and the inspection manual are widely distributed among OECA staff, including the Regions, and posted publicly.

The enforcement response and penalty policy, which is attached, instructs enforcement personnel to use information on the presence of pregnant women or children under 18, if it is available, to select a gravity-based penalty from the penalty matrix. The ERP assigns a penalty category in cases where information is known about the occupancy by pregnant women and children. Because sometimes it is impossible to obtain information on pregnant women and children, the ERP also addresses how the matrix should be applied in the absence of this information.

To support the Enforcement Response Policy, the RRP Inspection Manual (attached) references the significance of information on pregnant women and children and specifically highlights that: "[i]t is particularly important for inspectors to determine if there are any occupants that are pregnant women or children under the age of 18." See Manual at Chapter 3, page 18.

The approach used in Region 4, and cited in our previous response, is consistent with the national guidance. Region 4 collects evidence of occupants who are pregnant or may be children under age 18 if it can be obtained during the inspection either from the records reviewed or

directly communicated by the company representative who is interviewed during the inspection. In this regard, the Region recently has added a specific line item to the documentation checklist for inspectors to assure proper documentation of attempts to check for evidence of the presence of pregnant women and children during inspections. If the information cannot be obtained during the inspection, then the case development officer to whom the file is assigned will follow-up and attempt to confirm occupancy at the time renovation work occurred. Such information could then be used as described above in calculating the penalties consistent with the ERP.

Since the approach of having the case development officer follow-up and attempt to confirm occupancy is a helpful practice, the Agency plans to incorporate it in our online "Q & A" materials for inspectors. This will be available online to all the agency staff that work on the Lead RRP rule compliance and enforcement.

Additionally, recognizing the importance of this issue, the Agency's Office of Enforcement and Compliance Assurance (OECA) will issue a national policy statement to all ten EPA regions re-emphasizing the importance of inspectors and enforcement officers trying to obtain information about occupants who are pregnant women or children under the age of 18 exposed to lead hazards that may have occurred during renovation, repair, or painting activities. OECA will also cite the RRP Inspection Manual where this has been a long-standing policy.

If you have any further questions, please do not hesitate to contact my office at (202) 564-4711.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Flynn", with a long horizontal flourish extending to the right.

Michael P. Flynn
Acting Deputy Administrator