

MEMORANDUM OF UNDERSTANDING
between the
U.S. ENVIRONMENTAL PROTECTION AGENCY
Region 1, New England
and the
U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Region 1, New England

I. Purpose

The purpose of this interagency Memorandum of Understanding (MOU) is to expand the working relationship between Region 1, New England of the United States Environmental Protection Agency (EPA) and Region 1, New England of the Occupational Safety and Health Administration (OSHA) of the Department of Labor (collectively, the Parties or Agencies). The goal of the Agencies in entering into this MOU is to improve and optimize the combined efforts of the Parties to achieve protection of workers, the public, and/or the environment at facilities subject to EPA and/or OSHA jurisdiction.

This MOU will establish a process and framework for notification, training, consultation, and coordination between EPA and OSHA to more effectively support the Agencies' enforcement programs. In particular, improved coordination should help (1) OSHA enforce the Occupational Safety and Health Act (OSH Act) and undertake special enforcement initiatives, such as OSHA's Lead in Construction standard (29 CFR 1926.62), and (2) EPA enforce the Lead-Based Paint Renovation, Repair, and Painting Rule (RRP), and 40 C.F.R. Part 745, Subpart E.

II. Background and Responsibilities

EPA and OSHA have the statutory responsibility to ensure the safety and health of the public and America's workforce through the timely and effective implementation of a number of federal laws and implementing regulations. In some areas, the responsibilities of the Agencies are separate and distinct. In others, they are complementary. EPA and OSHA wish to work together to maximize the efforts of both Agencies to ensure the efficient and effective protection of workers, the public, and/or the environment.

A. EPA Responsibilities

EPA responsibilities include the protection of public health and the environment by pursuing compliance with federal environmental statutes and regulations, including, among others, the Toxic Substances Control Act (TSCA). Under the authority of section 402(c)(3) of TSCA, EPA published rules to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. "Target housing" is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. The RRP rule establishes requirements for, among other things, lead-safe work practices, the procedures for firms and individuals to become RRP certified, and for the EPA accreditation of training providers who will develop certification and refresher courses for renovators. EPA is also

EPA/OSHA Memorandum of Understanding

authorized to carry out inspections of RRP work sites and training facilities to assess and, if necessary, enforce compliance with the RRP rule.

Section 404(a) of TSCA provides that any State or Tribe that wishes to administer and enforce these regulations may submit an application to the Administrator for authorization of such a program.

Although EPA reserves its right to exercise its enforcement authority under TSCA, once EPA approves a State or Tribal program, the State or Tribe is responsible for administering and enforcing the program in that State or Tribal area. States and Tribes will still be responsible for reporting program implementation progress to EPA.

Effective July 9, 2010, the Massachusetts Department of Safety received authorization from EPA to administer and enforce the lead safety standards for renovation, repair and painting work in lieu of the federal standard being enforced by EPA in Massachusetts. Effective April 20, 2010, the Rhode Island Department of Health received authorization from EPA to administer and enforce the lead safety standards for renovation, repair and painting work in lieu of the federal standard being enforced by EPA in Rhode Island. No other New England State or Tribe has been delegated the RRP rule.

Section 9(d) of TSCA requires EPA to consult and coordinate with other federal agencies to achieve the maximum enforcement of TSCA while imposing the least burdens of duplicative requirements on the regulated community

B. OSHA Responsibilities

OSHA is responsible for enforcing the OSH Act, 29 U.S.C. 651 et. seq. The goal of the OSH Act is to assure so far as possible that every working man and woman in the nation has safe and healthy working conditions. To achieve that purpose, the Act provides broad authority for a variety of activities and programs designed to reduce the number of occupational safety and health hazards at places of employment. Among these is the authority to promulgate mandatory safety and health standards for private sector workplaces and to conduct inspections of such workplaces to determine compliance with the OSH Act and with OSHA standards. Additionally, the OSH Act has a mechanism where individual states can enact a state version of the OSH Act. These state plans must be at least as effective as the Federal program, and must cover both public and private workplaces in the state. OSHA's authority extends to any private sector workplace where there is an employer/employee relationship, but does not cover the self employed or partnerships with no employees. In addition, the OSH Act allows OSHA to provide education, outreach, training and assistance to help employers and employees make their workplaces safer and healthier. In 29 CFR 1926, OSHA has promulgated a number of standards that apply to construction work. This includes a standard for working with lead and lead paint.

III. General Operating Procedures Covered Under This Interagency MOU

In recognition of the Parties' statutory authorities and responsibilities described above, the Parties intend to follow the procedures described below. As more fully described below, the

EPA/OSHA Memorandum of Understanding

Parties would like to promote the fullest possible cooperation and coordination in developing and carrying out training, data and information exchange, technical and professional assistance, referrals of alleged violations, and related matters concerning compliance and law enforcement activity to ensure the health and well-being of the Nation's workforce, the general public, and/or the environment.

A. General Efforts to Promote Coordination and Cooperation

It is the Parties' expectation that the following cooperative efforts may be undertaken in fulfillment of this MOU.

1. The Parties expect to discuss areas of cooperation in relation to their annual plans and commitments and, if possible, identify specific types of facilities to be jointly addressed during the year.
2. EPA and OSHA will designate a point of contact for the purpose of this MOU.
3. EPA and OSHA will exchange names and telephone numbers of appropriate regional enforcement field personnel, including personnel in OSHA regional and area offices. The list will also mention the employees' areas of substance expertise. All information will be kept up to date by both Parties. Each Party should prepare and distribute these contact numbers to appropriate field personnel.
4. EPA and OSHA will hold a meeting to discuss what specific categories of information can be shared between the Agencies without raising confidentiality or privilege concerns; what barriers there are to free information exchange; and whether there are procedures or mechanisms that the Parties could establish to remove some of those barriers.
5. Resolution of policy and implementation issues concerning this MOU should first be discussed between the staff of the two Agencies. Issues that cannot be resolved at the staff level should then be discussed by the upper levels of each Agency's regional management.
6. EPA and OSHA expect to meet jointly, as necessary, to discuss the progress of actions made under this MOU, evaluate the effectiveness of enforcement referrals, and make changes to the MOU process to improve effectiveness and efficiencies.
7. EPA and OSHA will prepare and keep current a list of the relationships between the federal and state authorities in Region 1 outlining the separate and shared responsibilities on a state-by-state basis.

B. Inspections

1. EPA and OSHA may conduct joint inspections as appropriate to carry out the purposes of their respective statutory authorities. Such inspections may be coordinated in advance but may also be scheduled on an ad-hoc basis.
2. EPA and OSHA inspectors, in the course of conducting separate inspections, may discover situations involving potential violations of the other Agency's laws or regulations. In those

EPA/OSHA Memorandum of Understanding

instances, referrals to the appropriate program contacts, as described below, may be appropriate.

3. Where EPA and OSHA have conducted joint or coordinated inspections, they may share inspection reports, as appropriate, including copies of any photographs.

C. Referrals of Violations and Inspections

1. Although EPA does not conduct inspections for occupational safety, in the course of an EPA inspection EPA personnel may identify safety concerns within the area of OSHA responsibility or may receive complaints about the safety or health of employees related to their working conditions. In such instances, EPA may bring the matter to the attention of OSHA designated contacts. EPA inspectors are not to perform the role of OSHA inspectors; however, they may refer worker health and safety issues to OSHA pursuant to the procedures set forth in this MOU and implementing Agency directives. Likewise, OSHA may inform EPA of matters which appear to be subject to EPA jurisdiction when these come to their attention during Federal or State safety and health inspections or through worker complaints. Similarly, OSHA personnel will not perform the role of EPA inspectors.

2. Each Party may evaluate referrals from the other Party concerning potential violations of the Agency's requirements and, when appropriate and when resources allow, conduct investigations and inspections. The Parties intend to report back to each other in a timely manner regarding the results of these referrals.

D. Data Exchange

Subject to any constraints regarding confidentiality or privileges, the Parties expect to exchange information relating to potential inspection targets, complaints, inspections, investigations, violations discovered, imposition of monetary penalties or other legal actions taken to enforce pertinent laws and regulations, and other information necessary to ensure effective and coordinated law enforcement. If requested, EPA may provide to OSHA non-confidential data collected under TSCA and other federal statutes. The agencies will discuss the possible exchange of confidential or privileged information on a case-by-case basis.

E. Training

1. EPA and OSHA expect to cooperate in developing and conducting periodic training programs for each other's personnel in the respective laws, regulations, and compliance requirements of each Agency, as appropriate, to ensure that valid referrals are made when potential violations are found and to support joint enforcement and inspection initiatives. The Agencies also expect to develop references and tools to assist inspectors in evaluating potential violations in the field and making effective referrals. This MOU contemplates exchanges of appropriate training materials and information and development of specialized training activities. Likewise, OSHA and EPA intend to make each other aware of local training opportunities that could be useful for enhancing each other's effectiveness.

F. Litigation Support

EPA/OSHA Memorandum of Understanding

- 1. As appropriate, and as resources allow, OSHA and EPA intend to provide support for each other's litigation efforts as appropriate and in accordance with their respective statutory authorities. Such support could include, among other things, providing suggestions for expert witnesses and being available for consultations about the applicability of regulatory requirements.**
- 2. OSHA and EPA agree that the Agencies are not in privity for purposes of res judicata or claim preclusion because, among other reasons, the Agencies have different statutory goals**

IV. Period of this Interagency MOU

This MOU is to take effect upon the signature of both Parties and remain in effect unless modified in writing by mutual consent of both Parties or terminated by either Party upon 30 days advance written notice to the other. On an annual basis, the Parties expect to review this MOU for modifications.


This MOU does not preclude either Agency from entering into separate agreements or memoranda of understanding setting forth procedures for other special programs that can be addressed more efficiently and expeditiously by special agreement.

V. Nature of this Interagency MOU

Nothing in this Agreement is intended to diminish or otherwise affect the authority of either Agency to implement its respective statutory and/or regulatory functions. Each Agency retains its authority and ability to enforce violations of its regulations and statutes and to keep confidential certain information as required by law or regulation or if needed to ensure the proper administration and enforcement of each Agency's respective statutes. This MOU is a nonbinding statement of intent and is not a rule, regulation, contract, or interagency agreement. The MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity by persons who are not party to this MOU, against OSHA or EPA, their officers or employees, or any other person. This MOU neither directs or applies to any person outside OSHA or EPA, nor provides or creates defenses for any third party to use in any litigation.

EPA/OSHA Memorandum of Understanding

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 1, NEW ENGLAND



H. Curtis Spalding, Regional Administrator

Date:

U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION



Marthe B. Kent, Regional Administrator

Date: