2011 Enforcement Unit Update

COMPLY

Overview

	FY2010
Total no. of investigations	247
[Subset] No. of PRE investigations	176
[Subset] No. 404/402g lead firm/lead professional investigations	71
No. of certifications suspended or revoked (Notice of Intent or action)	8
No. of compliance Letters of Inquiry	227
No. of Notice of Non-compliances	115
No. of Citations	157

- Pre-Renovation Education (PRE) Update
- R325.99409

PRE summary (FY2010)

176 investigations opened

161 investigations closed

122 with no enforcement action taken

60 citations issued

$13,350 in fines collected

1,030 housing units evaluated

EPA

- Emphasis on enforcement
  - Audits of case files
  - Review of forms and processes
- State-assisted RRP enforcement

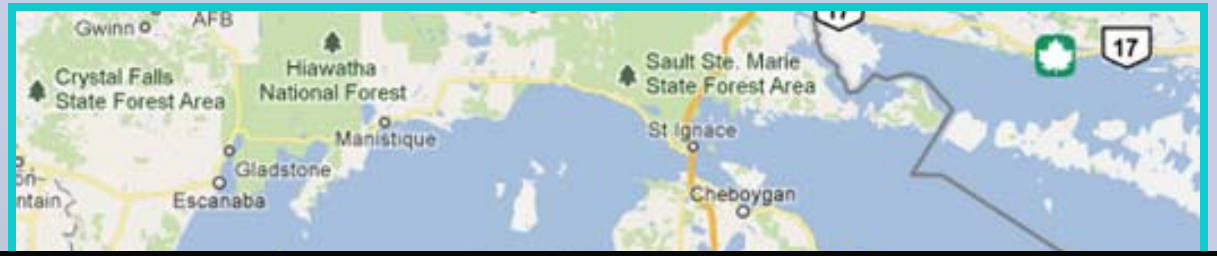
In May, HHS enforcement staff accompanies three EPA compliance officers to assist in conducting on-site RRP enforcement.

EPA has sole RRP authority.

HHS provided logistics support, local knowledge, and oversaw Pre-Renovation Education inquiries for each site.

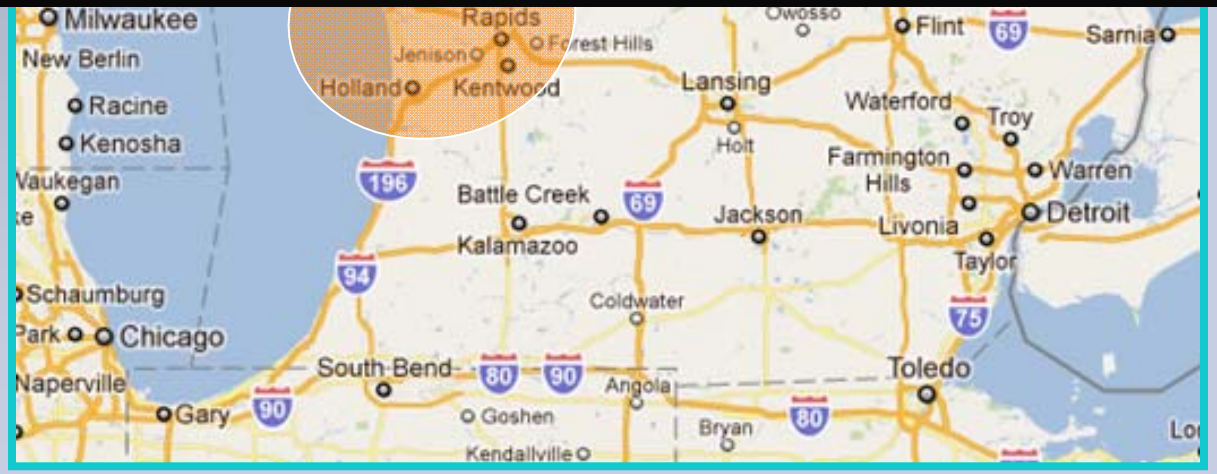
Michigan was the first state chosen for non-complaint-driven enforcement visits.

- ≈ 150 addresses visited
- ≈ 30 onsite inspections where renovation work



comply

- Compliance with worksite set-up and other practices was minimal
- Much was learned



HHS Compliance Assistance Program

Your best option. Ours too.

Onsite consultation and/or report review.

Enforcement risk... low

Voluntary, but why not?

Free! (Or, at least, already paid for.)

Annual Letter of Inquiry

Beginning this year, all lead abatement contractors will receive a Letter of Inquiry asking for information on abatement projects in the last 12 months.

These statements will be kept on permanent file. Evidence counter to those statements may be used to demonstrate falsifying of records to the State of Michigan.

Cause: Too many failures to notify.

Possible extension to individuals.

cases

(PRE) Randomly selected contractor operated from multiple store fronts and responded with information for 197 housing units. Notice of noncompliance issued for failure to include the address of the unit renovated in the acknowledgment and a citation was issued for failure to comply with PRE in several units.

Fined: 2,970.00 **Collected: 2,970.00**

(PRE) Received complaints about two landlords in separate cities conducting renovation activities in their rental units. Both landlords each own over 100 houses. One landlord has violations in more than 50 units. The other is still to be determined. Both cases currently open.

cases

Risk Assessor cited for incomplete sampling, incorrect sampling methodology, and failure to notify.

Fined: $3,150.00 ***Collected: $3,150.00***

Abatement company issued citation certification violation.

Fined: $1,300.00 ***Collected: $1,300.00***

(Pending) Abatement Contractor issued citations for inadequate protection of occupant belongings, incomplete worksite preparation, and certification issues. Intent to Revoke Certification also issued.

Fined: $7,600.00 ***Collected: $6,400.00***

cases

Abatement Contractor cited for incomplete/inadequate

comply

Abatement Contractor cited for certification violations:

Fined: $1,500.00 ***Collected: $1,500.00***

cases

Abatement contractor cited for inadequate worksite preparation (caution tape, plastic ground cover), unwrapped debris, certification and notification issues.

Fined: $1,445.00 ***Collected: $1,445.00***

Risk Assessor cited for violations of clearance protocols.

Fined: $1,350.00 ***Collected (pending): $1,050.00***

Risk Assessor cited for failures to test all surfaces during a lead inspection and identify all hazards.

Fined: $2,700.00 ***Collected (pending): $1,350.00***

Healthy Homes Section Enforcement process flow chart

Complaint/tip, Programmed inspection, or Follow up review

Investigation Initiated

- Open file
- Assign HHS case number
- Track all info in section compliance database

Evidence collection:
Records review
Photographs
Statements
Complaints/tips
Contact logs
Report audits
Field audits
Compliance history

Issue enforcement actions, if any, based on comparison of evidence against the work practice standards set forth in Michigan law and rules.
Send certified mail or, if that is refused, Proof of Service by HHS staff
DCH-1247(E) "Accept/Appeals" form included to established person's rights to appeal procedures included as established in the Administrative Procedures Act of 1969

Accept

- No appeals hearing or conference.
- Company or individual remits any fines due.
- Company or individual submits a Plan of Corrective Action detailing how compliance will be achieved in the future.

Informal Appeals

Compliance Conference

- Individuals and/or firm principals and HHS staff attend.
- Typically no attorneys...
- Section manager and/or senior compliance officer decides outcome.
- Large majority of HHS appeals are settled at the Pre-Hearing level.

Formal Appeals

Administrative Tribunal

- MDCH represented by MI Office of the Attorney General/MDCH Office of Legal Affairs
- Decision made by an Administrative Law Judge (ALJ).
- Evidence admitted to court as exhibits with sworn testimony.
- ALJ makes recommendation for a final decision to the MDCH director.
- MDCH director issues Final Order.

Q: What is the proper way to collect paint chip samples.... doesn't including all layers of paint dilute the lead? It seems like this is wrong.

A: Both the ASTM and HUD Guidelines clearly instruct the professional to collect all layers of paint in the sample, but nothing of the substrate. The standard is already set low enough to compensate for whatever dilution may occur by other, non-LBP layers.

Q: Dan, Can you tell me where on-line I can find a list of State approved encapsulants? I have been looking and can't seem to locate one.

A: There is not an approved list per se. Rather, encapsulants approved for use in Michigan must meet ASTM Standards E1795-04 "Standard Specification for Non-Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings" (or most current equivalent) or E1797-04 "Standard Specification for Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings". You should be able to find this information on the label.

We've had some marketers call asking us to put their product on our list because it's "really good." My answer: We're not a testing lab, but ASTM is. If you get their approval, you've got ours.

Q: I got a letter saying I was selected for an audit. How was I chosen for this honor?

A: The department uses a variety of methods to select a someone for an audit. Many are complaint based. You may also have been chosen through random selection. Your volume of work may also inform the decision. It is our goal to audit all our professionals. The state may audit your work at any time to ensure you are complying with the requirements of your certification.

Q: How do I report when I return to a house in the spring to check and sample for bare soil?

A: Report the activity on that month's reporting form. Indicate in your email to us, if you use the electronic reporting form, or note it on your paper form if you fax, that this is a "Spring return" visit. We will then go back in and modify the original notification in our database. We will be amending the form to include a way to indicate this is a return visit.

Also, send a report addendum to the necessary parties with the new soil results. Of course, this will be expected because your original report stated that bare soil areas could not be evaluated due to snow and you would be returning in the spring.

comply

comply

please