



UNITED STATES
DEPARTMENT OF LABOR

Occupational Safety & Health Administration

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• **Standard Number:** [1926.62](#); [1926.62\(d\)\(2\)](#); [1926.62\(d\)\(2\)\(i\)\(A\)](#); [1926.62\(d\)\(3\)\(iii\)](#); [1910.62\(d\)\(3\)\(iv\)](#) ;
[1926.62\(d\)\(3\)\(iv\)\(A\)](#); [1926.62\(d\)\(3\)\(iv\)\(B\)](#); [1926.62\(n\)\(4\)](#)

September 10, 2008

Mr. William F. Alcarese
13107 East Greenbank Road
Baltimore, MD 21229

Dear Mr. Alcarese:

This is in response to your correspondence of April 11, 2008 to the Occupational Safety and Health Administration (OSHA). Your letter was transferred to OSHA's Directorate of Enforcement Programs for response. This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any questions not delineated within your original correspondence. In your letter, you requested an interpretation regarding OSHA's standard for Lead in Construction, 29 CFR 1926.62. You specifically ask about the standard's requirement for an employer to conduct an exposure assessment for tasks involving lead-containing paint.

Your letter references an existing letter of interpretation, to [Mr. Hsin Chou, dated March 1, 1999](#) which states that OSHA does not set a 0.06 percent (%) threshold as a lower concentration of lead in paint which would exempt an employer from the requirements of the standard. Our letter to Mr. Chou provides additional detail describing an employer's continuing obligation to conduct an exposure assessment for tasks involving lead.

You state in your letter that you believe that this is contradictory to information presented in OSHA's report on the Regulatory Review of 29 CFR 1926.62, Lead in Construction, which you feel states that the Lead in Construction standard has no impact on activities involving paints manufactured after 1978. Based on your review and assessment of these two documents you raise the following question.

Question: Is OSHA stating an exposure assessment would not be necessary when the related task is a trigger task (or other tasks) as outlined in 1926.62 and when the coatings are determined to be "lead free" (below the 0.06% threshold)?

Response: The Regulatory Review of 29 CFR 1926.62 states that "lead paint was banned after 1978; therefore, the standard has no impact on painting new residential units or repainting units build after 1978." The Consumer Product Safety Commission (CPSC) considers paint containing less than 0.06% lead to be "lead free." OSHA does not, however, accept that categorization. OSHA's mission and that of the CPSC (as well as the Housing and Urban Development Agency and others who address lead in paint) are different. Whereas, the CPSC's mission is to protect consumers from harmful consumer products, OSHA's role is to protect workers from health and safety hazards, including exposure to harmful levels of lead, whatever the source. Accordingly, for all tasks governed by OSHA's Lead in Construction standard (29 CFR 1926.62) involving paints having any level of lead, employers must comply with the assessment measures and any applicable protections of that standard.

If an employer is working with paint which contains any amount of lead, including those with less than 0.06%, in such a way that would generate airborne levels to which employees may be exposed, it is the employer's duty to conduct exposure monitoring (or use objective or historical data as defined in 29 CFR 1926.62(d)(3)(iii) through 1926.62(d)(3)(iv)(B) and in 29 CFR 1926.62(n)(4)) to demonstrate that the Lead in Construction standard's action level (30 micrograms/cubic meter of air) is not exceeded. The results of the exposure assessment then determine whether the employer would need to apply the further protections of that rule. If the levels of lead to which employees are exposed are below the action level (which may occur when the levels of lead in paint are very low and work is being done in such a way as to not disturb the paint and, therefore, generate airborne concentrations of lead), then the further requirements of the standard would not apply.

Our 1999 letter to Mr. Chou states that for certain tasks involving such "lead free paint" (CPSC definition) that do not create large amounts of dust (such as power tool cleaning with dust collection systems, manual demolition of structures, manual scraping, and manual sanding), OSHA would allow the application of objective data to demonstrate that worker exposure levels to paint would be warranted. Our letter, however, goes on to say:

OSHA wants to stress that this does not set 0.06% as a lower threshold for the concentration of lead in paint which would exempt the employer from the requirements of the standard. The employer must still follow all requirements of the standard and conduct an exposure assessment for the tasks involving lead. Additionally, we are not stating that the Consumer Products Safety Commission level is a "safe" concentration of lead in paint, since all tasks listed under (d)(2) frequently entail exposures above the action level even at extremely low concentrations of lead. We are simply stating that the application of objective data may be applied to the above-specified tasks in paragraph (d)(2)(i)(A), under the conditions stated herein. As these are less aggressive, dust-generating methods of removal, this type of objective data may reasonably be applied.

In addition, because you may be in business with clients in Maryland, we should refer you to the standards of the Maryland Department of Labor. As you may be aware, the Maryland Department of Labor administers an OSHA-approved state occupational safety and health program for both private and public sector employers and employees in Maryland. State plans are required to implement regulations that are "at least as effective" as the federal standards. For specific Maryland OSHA requirements, we recommend that you contact the Maryland Division of Labor and Industry:

MOSH Compliance Unit
1100 North Eutaw Street, Room 611
Baltimore, Maryland 21201-2206
Telephone: (410) 767-2189
Fax: (410) 767-2003

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by

statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed.

Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult the website.

Sincerely,

Richard E. Fairfax, Director
Directorate of Enforcement Programs

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