

**M e m o r a n d u m**

To: Mr. Bob Frank MIC: 30  
Supervisor, Fuel Taxes Section

Date: November 14, 1995

From: Stella Levy  
Staff Counsel



Subject:

I am responding to your request for a legal opinion as to whether \_\_\_\_\_ is required to register as a feepayer under the Childhood Lead Poisoning Prevention Act. For the reasons discussed below, I conclude that \_\_\_\_\_ is not required to pay the Childhood Lead Fee.

The facts, based on the materials you provided and my telephone consultation with \_\_\_\_\_ owner \_\_\_\_\_ are as follows. \_\_\_\_\_ is in the business of applying a product known as \_\_\_\_\_ to decks, driveways, patios, etc. This coating, which is essentially a polyacrylic mixture, is meant to waterproof, restore, and beautify existing surfaces. \_\_\_\_\_ neither manufactures nor distributes the coatings they apply. Therefore, \_\_\_\_\_ is a service provider and is not liable for the fee even if \_\_\_\_\_ were considered to be an architectural coating.

In my opinion, \_\_\_\_\_ falls within the definition of "architectural coating" provided by Regulation 3301. It is a "product which is used as, or usable as, a coating applied to the ...exterior surfaces of stationary structures and their appurtenances,... [and] to pavements." The manufacturer or distributor of this product is required to register with us. According to the printed materials, the coating is manufactured in California by \_\_\_\_\_. The manufacturer should be advised to apply for an exemption from DHS since the product does not appear to contain or have historically contained lead.

SCL:ph

cc: Mr. Ed King MIC: 33  
Mr. Larry Augusta  
Mr. Bob Shuman