

# NEW LAWS COULD ELIMINATE ILLICIT SHOPS

Hard as this may be to believe, shop owners may soon be thanking federal and state agencies for conducting an inspection. Some shops will be able to achieve valuable certification while others will struggle to differentiate between valid and invalid qualifications.

Environmental enforcement efforts under a new national spray coating rule, also known as the [HAPs 6H Rule](#), will now expose cash businesses and shops that don't have proper licensing through complaints from neighbors, by employees who inquire about safety requirements, and by competitors who are concerned about the cost of unequal enforcement.

As the result of a lawsuit won by the Sierra Club in 2006 against the EPA, collision repair shops can use the ruling enforced January 11, 2010, to validate environmental responsibility. In the mean time, suspected spray coating violators will begin showing up on EPA's [Report an Environmental Violation](#) webpage and on the [EnviroMedia Greenwashing](#) index.

Whether real or perceived, when business owners see a violation, they are now likely to become a tipster. When non-government organizations see a violation, they are motivated to drive negative campaigns and press. And when regulators see a violation, they can issue a fine. The problem of environmental pollution should be a concern to everyone, because even if your shop is not singled out, nonconformity by your competitors hurts the industry as a whole. The more companies that are seen as dodging compliance responsibilities, the less likely customers are to trust environmental-related claims in general, and the more likely regulators are to step in and impose restrictions.

Recent coordination efforts have been established to educate building inspectors, health and safety officials and fire marshals about EPA rule requirements since they regulate the automotive collision repair industry as well. This multi-agency educational campaign about the spray coating requirements will result in increased rates of enforcement with environmental obligations.

## Exemption Myth

There is much controversy whether shops should report compliance or exemption under the new HAPs 6H rule? Why is there so much debate? Perhaps it is because some shops are only aware of a portion of the picture. Many of us may remember the old East Indian fable about the Blind Men and the Elephant. Six blind men, having never been near an elephant, had an opportunity to touch one. After touching the pachyderm, each blind man adopted a different story. The story is a parable regarding the fact that people tend to understand only a tiny portion of reality and then form a belief based on incomplete information – that's HAPs 6H.

Filing an exemption petition alone does not mean a shop is exempt. The petition has to be reviewed and approved by the EPA. For a collision shop to be exempt from the requirements of the HAPs 6H rule, they need to provide proof that no cadmium, chromium, lead, manganese or nickel products are used in their spray booth. EPA scrutiny might include booth filter lab-testing for Hazardous Air Pollutants (HAPs) that may expose additional violations. Signing an exemption affidavit that you won't buy certain chemicals does not relieve you from unknowingly spraying specialty products that contain tiny amounts of restricted chemicals.

Even if a shop's petition is approved by the EPA, owners still need to comply with all the existing state and federal environmental regulations. If an automotive repair shop cannot meet local rules or if they intend to change to products containing controlled HAPs, then they must submit a notification to the EPA and comply with all of the requirements in the HAPs 6H Rule.

Your shop could find itself "in over its head" if it ignores underlying exemption consequences. How, though, can you justify an investment in equipment upgrades and process improvements when it is all you can do to keep up with shifting regulations? Many times, just the up-front paperwork can be intimidating. However, by analyzing alternatives differently from traditional methods and completely examining your options, you may be able to show how compliance with the new HAPs 6H Rule can actually improve the bottom line.

## Pros and Cons

Benefits and Burdens Associated with  
NESHAP Paint Stripping and Miscellaneous Surface Coating (HAPs 6H) Compliance

HAPs 6H Compliance	HAPs 6H Exemption
<p><b>Pros</b></p> <ul style="list-style-type: none"> <li>• Avoid EPA Examination</li> <li>• Claim Government Rebates</li> <li>• Promote Green Qualifications</li> <li>• Establish Employee Protection</li> <li>• Verify Fire Marshal Compliance</li> <li>• Validate OSHA Safety Compliance</li> </ul>	<p><b>Pros</b></p> <ul style="list-style-type: none"> <li>• Elude Gun Cleaning Restrictions</li> <li>• Postpone Environmental Reporting</li> <li>• Defer Additional Employee Training</li> <li>• Escape Prep Booth &amp; Filter Upgrades</li> <li>• Avoid HVLP Spray Gun Requirements</li> <li>• Evade Supplementary Recordkeeping</li> </ul>
<p><b>Cons</b></p> <ul style="list-style-type: none"> <li>• Equipment Upgrades</li> <li>• Additional Employee Training</li> <li>• Product Purchase Recordkeeping</li> <li>• Environmental Compliance Reporting</li> </ul>	<p><b>Cons</b></p> <ul style="list-style-type: none"> <li>• Whistleblowers</li> <li>• Suspected Greenwashing</li> <li>• Necessitates EPA Examination</li> <li>• Workers Compensation Liability</li> </ul>
<p><b>**It's easy to be compliant and most respectable shops are already in compliance.</b> *What makes compliance more advantageous than exemption? The answer is simple: Exposure.</p>	

### Compliance Justification

As HAPs 6H compliance transforms to the Green Shop movement, however, it also drags a lot of rubbish with it. Shops that change their practices from dodging to do-good overnight should be avoided. Some of the green policies being copied and pasted on to websites are laughable. "Green Shops" with massive warehouses, drive-through repairs, and dazzling showrooms equate "Green" with planting a few trees or giving books to a local school.

Look out for well-certified shops, with proven accounts of responsible safety. To boast eco-credentials, shops should have a detailed assessment from experts licensed to validate environmental measurements and sustainability.

Frank Popoff, past chairman of Dow Chemical Co., wrote in the EPA Journal, "For industry, the message is clear. Progressive companies that further the cause of sustainability will become more valuable and more highly regarded in the marketplace. Those that don't, place their future success at risk."

Unfortunately, for many collision repair shops – especially small operations – the HAPs 6H compliance decision is anything but clear.

Shops can use a number of negative and positive arguments to justify why HAPs 6H compliance is preferred. While negative arguments are persuasive, positive arguments may produce better results.

First, consider the negative justifications.

❑ *Avoid enforcement actions.* The penalties depend on several factors, such as the gravity of the offense, the economic benefit that the business gained by not complying, the company's efforts to come into compliance, the size of the company, the actual or potential harm that the offense caused, how long the offense occurred, etc. Under the Clean Air Act, the US EPA is allowed to assess penalties of up to \$32,000 per day, per violation. The implementing agency has discretion when assessing penalties. The US EPA also has the option to pursue violations as criminal offenses – generally if the offense involves intentional or willful actions.

❑ *Avoid loss of government funds.* Robert W. Morris, legal counsel for GRC-Pirk Management, writes, "Under the Clean Air and Clean Water Acts, EPA is authorized to bar facilities [that are] guilty of criminal or civil violations from entering into federal assistance agreements or receiving federal funds."

Now consider the more positive approaches you can use to justify HAPs 6H compliance.

- ❑ *Gain good public relations.* Your shop's public image on environmental issues directly affects the company's bottom line. After all, the public's awareness and scrutiny of environmental issues is at an all-time high, especially since greenhouse gas and energy dependence are highly publicized. Also, the Emergency Planning and Community Right-To-Know Act (EPCRA) gives the public greater access and knowledge about hazardous chemical storage inventories and related pollution. As a result, many consumers increasingly consider a shop's environmental reputation when deciding where to get their vehicle repaired.
- ❑ *Achieve Green certification.* The US EPA and many State incentive programs offer funding, rebates and tax credits for environmental enhancements. The certification process usually includes compliance validation and sustainability verification according to the US Internal Revenue Service (IRS) assessment regulations. A Registered Environmental Assessment (REA) conveys a greater degree of trust and confidence to consumers. As more shops recognize this advantage and work to become certified Green, they are integrating their HAPs 6H compliance achievement into the framework of environmental policies and promotions.
- ❑ *Attain Green sustainability.* While the term sustainability has just recently included Green, what it refers to is a very old and very simple concept - the ability to keep going over the long haul. As a value, it refers to maintaining your Green status into the future as well as the present. Green sustainability is a business management function similar to the concept of Total Quality Management (TQM) that is familiar to most shop owners and managers. Some shops are now incorporating environmental goals into their TQM programs, getting employees to identify ways to reduce the impact of environmental risks on operations. For example, such shops are improving their bottom line by substituting less-toxic paint products, adding solvent-recovery systems, demanding suppliers take back packaging material after delivering products and modifying procedures to create less hazardous waste.

### **Green Scene**

As concern about the environment and reduction of fossil fuel use becomes more pronounced throughout the country, more people are turning to green technology to help address regulatory issues. A significant step that was taken for the HAPs 6H rule was the creation of the US EPA Collision Repair Campaign (CRC) to help implement the National Emission Standards for Hazardous Air Pollutants – NESHAP 40 CFR 63 Subpart HHHHHH (6H). The new standard will be fully implemented by January 2011 and is intended to reduce the negative environmental and health impacts on shop employees and the surrounding community.

The US EPA created the CRC program to disseminate information and technology that can assist the automotive repair industry in early compliance. There are many green certification programs that provide incentives and benefits to shops that upgrade equipment and improve processes that meet stringent sustainability requirements as well as rule 6H compliance. When Green sustainability certification is received by a business, they enjoy the savings gained through energy and waste reduction, which carries the designation of being an eco-friendly shop. Many shops that become HAPs 6H compliant work with federal and local funding programs to meet energy and environmental guidelines.

### **Ecocredentials**

Dishonest shops could soon get more publicity than they want. [Enviromedia](#) is calling on consumers to send examples of both good and bad green marketing campaigns. Launched just before the U.S. Federal Trade Commission held its "Eco in The Market" forum in Washington, D.C., to address green advertising claims, the public site features TV, print and online ads. The FTC [announced](#) it is accelerating its review of environmental marketing guidelines, due to a rapid rise in green advertising.

Lawyers, environmentalists and marketing groups say they've seen an increase in greenwashing suits over the past year, according to the [National Law Journal](#). These groups are questioning everything from household cleaners to automobiles for their eco-friendliness. The

Journal warns lawyers and companies about the growing popularity of greenwashing claims. Companies should be on the lookout for consumer class actions alleging greenwashing.

As the HAPs 6H compliance issues evolve over the New Year, our depth of understanding should grow as well. It might help to know that there are three distinct areas of Greening today. Three primary elements are Green products, Green equipment, and Green practices. Each piece of this environmental puzzle has its value and makes a critical contribution to the HAPs 6H compliance process. Though the process has been slow in coming, we are now seeing more and more Green supplies such as waterborne paints and special spray application equipment. Unfortunately, not all of these items are as compliant as they suggest through their carefully crafted marketing.

We can all agree that Green equipment is a valuable piece of the overall picture. As one might suspect, equipment requirements initially dealt with safety and local regulations. In this new Green environmental era, there is the necessity to include equipment constraints that will not create environmental health issues and will properly address the sustainability of our resources. And this is a good process to see, but we cannot neglect the human factor that is desperately needed if shops are going to succeed in the all-too-imposing compliance issues.

Green practices appear to be the most important part of the compliance puzzle for a shop to attain HAPs 6H certification. It does none of us any good to have Green products and Green equipment if we do not include Green practices in the daily operation. This is a serious reality check for shop survival. All too often, we hear about a kind of "Proxy Green" where shops are led to believe that they are being environmental because they purchase some Green products. The problem is that these ideas require little commitment from a shop owner other than to buy or install what is offered.

### **Anticipation**

As the HAPs 6H deadline draws near, a subtle anxiety creeps in each time thoughts turn to the January 10, 2011 deadline. Thoughts like "I don't have enough time," or "I'll never get this done in time" have both a factual and "fear-based" quality. While it can sometimes be the case that poor planning or circumstances result in a genuine rush, the perception of "not enough time" is a conditioned thought that creates a "false" sense of crises that undermines reason.

Avoid incautious suggestions from suppliers that suggest "don't do what I say, do what I mean." As comic as the suggestion may seem, its sentiment can often be the basis of misinterpretation between suppliers and their customers. Understanding why is not particularly difficult. Not understanding the Pros and Cons can easily result in miscommunication. Regrettably, this miscommunication often finds its way into proposal, contracts, and reports, which may create costly compliance issues.

As we sort the last scraps of wrapping paper, the cards and the wine bottles into their recycling bins, and say goodbye to a recession-struck year, we can look ahead, optimistically, to a year where Green is great.

The calamity of Copenhagen has, despite everything, planted seeds of change. Green is going main stream, and Green recognition is no longer seen as an ethical must but as a business management obligation in its own right.

Don't let the lack of recent inspections or rumor of exemption lull you into inactivity. After considering the unpleasant consequences of not complying with HAPs 6H, virtually all rational shop owners should conclude that **paying it forward** as an investment in Green will not only result in an environmentally safe workplace, but ensure a better night's sleep.

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